

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

APPEAL FROM CHARLSTON COUNTY

MAY 30 2019

MASTER-IN-EQUITY LAW COURT

SC Court of Appeals

Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Allen Livingston.....Respondent

Harold Simmons Jr.....Appellant

RECORD ON APPEAL

Harold Simmons Jr., Pro Se

3042 North Carolina Ave.

North Charleston, SC 29405

(843)480-8694

Attorney for Appellant

Bruce A. Berlinsky, P.A.

One Carriage Ln. Bldg. F

Charleston, SC 29407

(843)852-2202

Attorney for Respondent

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Mikell R. Scarborough, Master-In-Equity Law Judge

Case No. 2016-001201

Harold Simmons Jr.,.....Appellant,

v.

Allen Livingston,.....Respondent.

APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL

Appellants purpose the following to be included in the Record on Appeal:

1. Judge Nicholson Order
2. Lis Pendens
3. Amend Answer Request Jury Trial
4. Amortization Report
5. All other Orders from common pleas and Master-In-Equity Courts
6. All Evidence on the Counterclaim

Harold Simmons Jr., Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694 Attorney for Appellant

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F
Charleston, SC 29407
(843) 852-2202 Attorney for Respondent

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—— Lease to Buy Agreement Contract	Exhibit A
—— Magistrate Court Application for Ejectment	Exhibit B
—— Respondent altered and forged Lease to Buy Contract	Exhibit C
—— Appellant Amortization Schedules	Exhibit D
—— Respondent Court Order for the Sheriff Office to Ejectment By Judge Thomas Hughston	Exhibit E
—— Appellant Court Order for Reconsider for Ejectment	Exhibit F
—— Appellant Clerk of Court Affidavit	Exhibit H
—— Attorney Seth Whipper response letter to Respondent Settlement Offer	Exhibit I
—— The unreported 2012 Money Orders paid to Respondent \$4,500.00	Exhibit J
—— Judge J.C. Nicholson Jr. Order February 27, 2013	Exhibit K
—— Respondent Filing for Appeal and Respondent Appeal Dismiss Order	Exhibit L+L1
—— Respondent Attorney Bruce A. Berlinsky letter about payment	Exhibit N
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May 27, 2019

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_____	Payment Break Down and Total Pay-off August 7, 2018	Exhibit Z

Exhibit 2



HAROLD SIMMONS <invictor59@gmail.com>

1606276 Simmons, Jr.

1 message

Melissa Milligan <milligan@charleston13.com>
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mon, Jun 18, 2018 at 11:17 AM

Please see the attached payment history to Allen Livingston as requested. I am also mailing a copy to your address of record. Please let me know if you need anything else.

Thanks,

Melissa Milligan

Assistant Manager

Office of the Chapter 13 Trustee

843-388-9844 Ext. 308

 1606276-PRINTING-85927.pdf
54K

Chapter 13 Trustee

Case No: 16-06276-JW
CLOSED

HAROLD SIMMONS JR

User: melissa

2

DISBURSEMENT HISTORY

DATE	CODE	DESCRIPTION	CREDITOR #	CHECK NO.	AMOUNT
ALLEN LIVINGSTON		Claim Number 1			
Jul 03, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0344868	3,227.39
Aug 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0346612	704.54
Sep 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0348337	637.37
Nov 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0351769	617.41
Dec 01, 2017	CR	AMOUNT DISBURSED TO CREDITOR		0353478	615.66
Mar 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0358569	614.05
Apr 02, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0360169	824.36
Jun 01, 2018	CR	AMOUNT DISBURSED TO CREDITOR		0363603	105.80
TOTAL FOR ALLEN LIVINGSTON					7,346.58
DISBURSEMENT TOTAL					7,346.58

(7)(17)

Need to Mail to Appeal Court

2



HAROLD SIMMONS <invictor59@gmail.com>

Livingston v. Simmons

3 messages

Mon, Aug 6, 2018 at 2:19 PM

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com>
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mr. Simmons,

The total amount due is \$47,640.40.

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

ALL FUNDS IN EXCESS OF \$5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

--- CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the

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Internal Revenue Code or for recommending to another party as to any matter addressed herein.



BEWARE! WIRE FRAUD IS ON THE RISE.

Accepting wire and disbursement instructions by email is dangerous, especially changes to those instructions. Verify by calling the originator of the email using previously known contact information prior to sending funds.

Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com>
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mon, Aug 6, 2018 at 4:11 PM

Mr. Simmons,

We forgot to add the post judgment interest. The correct total is \$60,212.97

2

Thanks,

Jessica

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

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Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

--- CONFIDENTIALITY NOTICE: This electronic mail transmission and any accompanying documents contain

(2)(12)

communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the Internal Revenue Code or for recommending to another party as to any matter addressed herein.

From: Jessica@berlinskylawfirm.com
Sent: Monday, August 06, 2018 4:11 PM
To: 'invictor59@gmail.com'
Subject: Livingston v. Simmons

[Quoted text hidden]

 **scan0089.pdf**
300K

Z

information belonging to the sender which may be confidential and legally privileged. This information is intended only for the use of the individual or entity to whom it is addressed. Any disclosure, copying, distribution, or action taken in reliance on the contents contained herein is strictly prohibited. If you received this transmission in error, please notify the sender and delete the message and its contents. IRS CIRCULAR 230 NOTICE: Any tax advice contained in this communication (or any attachments) is not intended or written to be used for the purpose of avoiding penalties under the Internal Revenue Code or for recommending to another party as to any matter addressed herein.



BEWARE! WIRE FRAUD IS ON THE RISE.

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Jessica@berlinskylawfirm.com <jessica@berlinskylawfirm.com>
To: "invictor59@gmail.com" <invictor59@gmail.com>

Mon, Aug 6, 2018 at 5:03 PM

Here you go.

Jessica Reynolds

Legal Assistant to Bruce A. Berlinsky

One Carriage Lane, Bldg. F

Charleston, SC 29407

P: 843.852.2202

F: 843.852.4844

Jessica@berlinskylawfirm.com

3

ALL FUNDS IN EXCESS OF \$5,000.00 MUST BE WIRED - CALL FOR WIRING INSTRUCTIONS

Wired Funds Notice: BE ALERT! We do NOT change or alter our wiring instructions. Please call to verify that you have the correct instructions prior to wiring.

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4/141

\$54,986.98

LESS:

Payment on July 3, 2017	\$3,227.39
Payment on August 1, 2017	\$704.54
Payment on November 1, 2017	\$617.41
Payment on September 1, 2017	\$637.37
Payment on December 1, 2017	\$615.66
Payment on June 1, 2018	\$105.80
Payment on March 1, 2018	\$614.05
Payment on April 2, 2018	\$824.36

\$7,346.58

-\$7,346.58

\$47,640.40

SUBTOTAL

Post Judgment Interest 4/8/15 – 12/31/15	\$2,624.61
Post Judgment Interest 1/1/16 – 1/31/16	\$3,712.54
Post Judgment Interest 1/1/17 – 1/31/17	\$3,712.54
Post Judgment Interest 1/1/18 – 8/8/18	\$2,522.88

\$12,572.57

\$12,572.57

TOTAL DUE

\$60,212.97

CASHIER'S CHECK

6838600485

0068386

11-24

Office AU #

1210(8)

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 06, 2018

PAY TO THE ORDER OF

***ALLEN LIVINGSTON AND ***
BRUCE BERLINSKY, HIS ATTORNEY

Forty-seven thousand six hundred forty dollars and 40 cents

\$47,640.40

Payee Address:

Memo:

NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 47,640.40

Shame C Walker
AUTHORIZED SIGNATURE

⑈6838600485⑈ ⑆121000248⑆4861 009082⑈

PRINTED ON LINEMARK PAPER - HOLD TO LIGHT TO VIEW FOR ADDITIONAL SECURITY FEATURES SEE BACK

CASHIER'S CHECK

6838600486

0068386

11-24

Office AU #

1210(8)

Remitter: HAROLD SIMMONS
Operator I.D.: u432821

August 07, 2018

PAY TO THE ORDER OF

***ALLEN LIVINGSTON AND ***
BRUCE BERLINSKY, HIS ATTORNEY

Twelve thousand six hundred thirty-two dollars and 57 cents

\$12,632.57

Payee Address:

Memo:

NORTH CAROLINA AVENUE

WELLS FARGO BANK, N.A.
1074 E MONTAGUE AVE
NORTH CHARLESTON, SC 29405
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER US \$ 12,632.57

Shame C Walker
AUTHORIZED SIGNATURE

⑈6838600486⑈ ⑆121000248⑆4861 009082⑈

Harold Simmons Jr.
3042 North Carolina Ave
N.C. S.C. 29405
843-480 8694

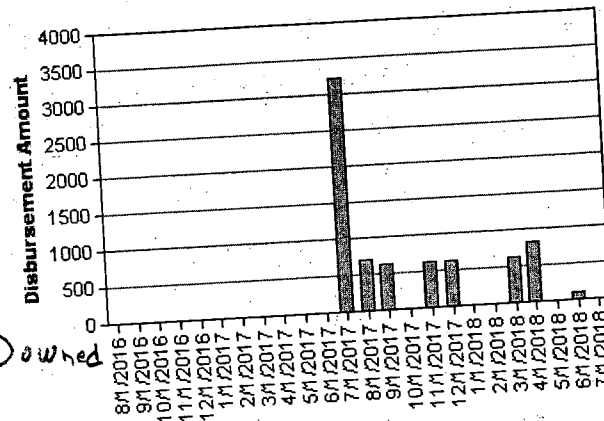
Chapter 13

(Use CTRL-P to Print this Page)
Close Window

Claim 1 ALLEN LIVINGSTON
c/o BRUCE A. BERLINSKY, PA
ONE CARRIAGE LANE, BUILDING F
CHARLESTON SC 29407

Next Disbursement Info

Disbursements to this Claim



CLAIM DETAIL

Case Number	1606276
Creditor	ALLEN LIVINGSTON
Trustee's Claim Number	1
Court's Claim Number	3
Claim Type	S - SECURED (S)
Claim Filed Date	Monday, February 06, 2017
Mortgage Due Date	

CLAIM AMOUNTS

Claimed Amount	\$36,000.00
Scheduled Amount	\$0.00
Amount Paid Outside	\$600.00
Monthly Payment	\$28,653.42
Principal Owed	\$7,346.58
Principal Paid	\$3,453.42
Principal Due	0.00
Interest Rate	\$0.00
Interest Paid	\$0.00
Interest Due	\$0.00
Collateral Value	
Collateral Description	
Limit	\$0.00
Plan Code	100.00
Percent Allowed	0.00
Months to Calculate	

CLAIM FLAGS

Payee Level	22
Comment	claim amt per Order
Account Number	6/1/17
No Cost	5321
No Check	
Delete	
Reserve	
Stop Disbursement	
Continuing	
Special	

CREDITOR INFORMATION

Creditor Name	ALLEN LIVINGSTON
Address 1	c/o BRUCE A. BERLINSKY, PA
Address 2	ONE CARRIAGE LANE, BUILDING F
Address 3	CHARLESTON SC
Zip Code	29407-0000
Contact Name	
Creditor Number ShortCut	

Additional Names and Addresses	Date of Last Change
Payee: ALLEN LIVINGSTON • 6046 HYDE PARK RD. • Ravenel • SC • 29470	12/14/2016
ALLEN LIVINGSTON • c/o BRUCE A. BERLINSKY, PA •	2/7/2017

PAYMENT HISTORY FOR CLAIM 1 - ALLEN LIVINGSTON

Disb Date	Check Number	Payee Name	Type	Amount	Prev. Cred-
6/1/2018	363603	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$105.80	
4/2/2018	360169	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$824.36	
3/1/2018	358569	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$614.05	
12/1/2017	353478	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$615.66	
11/1/2017	351769	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$617.41	
9/1/2017	348337	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$637.37	
8/1/2017	346612	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$704.54	
7/3/2017	344868	ALLEN LIVINGSTON	AMOUNT DISBURSED TO CREDITOR	\$3,227.39	

Information call
MOSS ATTORNEYS, COM
PAUL PANSON 843-8744-3002

Chapter 13

Click Here to Print this Page

Bar Date(s): 4/3/2017 (has passed) 6/10/2017 (has passed)
Confirmed: 6/27/2017

PRINT INQUIRY
16-06276-JW

HAROLD SIMMONS JR (xxx-xx-5321)

Close Window

3042 NORTH CAROLINA AVE.
• NORTH CHARLESTON • SC
• 29405

\$1,050.00 MO

Trustee: James M. Wyman

Attorney: HEATHER S BAILEY

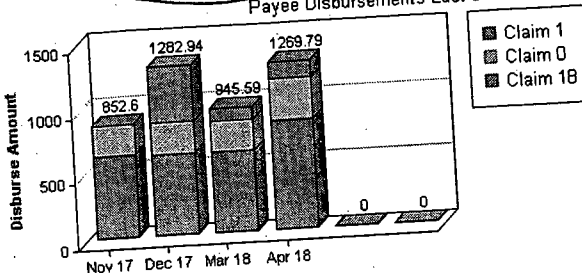
Payee Summary

Number of Claims	21
Total Amount Claimed	\$55,838.49
Total Amount Scheduled	\$72,369.67
Total Principal Paid	\$10,307.23
Total Principal Owed	\$45,531.26
Total Principal Due	\$3,624.77
Total Interest Paid	\$0.00
Total Interest Due	\$0.00

Claim Breakdown

	Priority	Secured	Unsecured	Other
Claimed	\$12,007.40	\$41,479.92	\$2,351.17	
Scheduled	\$11,381.00	\$6,489.92	\$54,498.75	
Principal Paid	\$2,415.61	\$7,891.62	\$0.00	
Principal Owed	\$9,591.79	\$33,588.30	\$2,351.17	
Principal Due	\$684.39	\$2,940.38	\$0.00	
Interest Paid	\$0.00	\$0.00	\$0.00	
Interest Due	\$0.00	\$0.00	\$0.00	
Monthly Payment	\$233.00	\$712.00	\$0.00	
Collateral	\$0.00	\$0.00	\$0.00	

Payee Disbursements Last 6 Months



13 Network

Claims Listing

Name (Acct)	Clin#	Filed	Desc	No Pymt	Prin Paid	Prin Owed	Clin Amt	Schd Amt	Int Paid	Int Due
ALLEN LIVINGSTON (5321)	17	✓	SECURED VEHICLE	\$500.00	\$500.00	\$0.00	\$500.00	\$500.00	\$0.00	\$0.00
CHARLESTON CO FAMILY COURT (2995)	26	✓	DOMESTIC SUPPORT OBLIGATION	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Gwendolyn Brown	4	✓	PRIORITY	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
INTERNAL REVENUE SERVICE (5321)	25	✓	PRIORITY	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Charleston County Revenue Collections	27	✓	PRIORITY	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SC DEPT OF REVENUE & TAXATION (5321)	27	✓	PRIORITY	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
D. SETH WHIPPER	8	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
LIFE CENTER FAMILY MEDICINE	10	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NPAS INC	11	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Palmetto Digestive Disease PA	12	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Roper St Francis Hospital	14	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SC HIGHWAY DEPT	19	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
BANK OF AMERICA (8838)	20	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
CABCORP	21	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
LCA COLLECTIONS	22	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SCEAG	23	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TRIDENT MEDICAL CTR	24	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
INTERNAL REVENUE SERVICE (5321)	28	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
SC DEPT OF REVENUE & TAXATION (5321)	28	✓	UNSECURED	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Attorney Listing

Name	Description	Level	Fee in Plan	Fee Paid Outside	Fee Paid to Date	Initial Amount	Monthly Payment	Fee Remaining
HEATHER S BAILEY	ATTORNEY FEE	22	\$3,100.00	\$400.00	\$2,415.61	\$684.39	\$233.00	\$684.39

Clerk Fees Listing

No Clerk Names have been established for this case.

Debtor Refund

Name	Description	Level	Refund Amount	Amount Paid	Amount Owed
HAROLD SIMMONS JR	DEBTOR REFUND	0	\$0.00	\$0.00	\$0.00

To check
NDC, O.B

Miss Miller
8 856 2408

Trustee

Phone 843-388-9844

Martha Feil

CALL 6-14-2018 1:25 p.m L.M.H

TO
Allen Livingston
7,346.58
7,240.78
+ 1000.00
Total paid
June 2018

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT Z

Harold Simmons, Jr. Pro Se
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North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Allen Livingston,

Plaintiff,

vs.

CASE NO. 2014-CP-10-1635

Harold Simmons, Jr.,

Defendant.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:04 a.m. on
August 6, 2018 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter

Master-in-Equity

P.O. Box 30276

Charleston, South Carolina, 29417

(843) 958-5071

casmith@charlestoncounty.org

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APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF:

Bruce A. Berlinsky, Esq.
Law Office of Bruce Berlinsky
1 Carriage Lane
Suite F
Charleston, SC 29407
(843) 852-2202
Bruce@berlinskylawfirm.com

ATTORNEYS FOR THE DEFENDANT:

Harold Simmons, Pro Se

3
P R O C E E D I N G S

1
2
3 THE COURT: This is 2014-CP-10-1635.

4 Mr. Simmons is here today pro se. I know in this
5 case that originally Mr. Whipper was representing
6 him. He's here today, but he's not in a
7 representative capacity. He's informed me of that.

8 Mr. Berlinsky is here on behalf of the
9 Plaintiff, Allen Livingston, correct?

10 MR. BERLINSKY: Correct.

11 THE COURT: If I'm not mistaken -- is this
12 case scheduled -- is this one of the ones that are
13 set for sale as well?

14 MR. BERLINSKY: Tomorrow.

15 THE COURT: This is a Motion to Stay the Sale
16 and set a bond is what I understand we're here for.
17 Mr. Simmons, you may proceed. Thank you, sir.

18 MR. SIMMONS: Yes, Your Honor. Since this
19 case has been filed -- this case had been filed under
20 fraud.

21 THE COURT: Let me stop you right there. I'm
22 not going to go back and retry the case. We're here
23 today to determine whether or not a bond -- my
24 understanding is whether or not a bond should be set
25 to stay the sale. There's a sale pending tomorrow.

1 It's been advertised for sale for three consecutive
2 weeks.

3 MR. BERLINSKY: That's correct, Your Honor.

4 MR. SIMMONS: But even with this sale, your
5 actions have put me -- it's almost like your action
6 is more like you hindering me from even being able to
7 even establish a bond. The bond that you established
8 the supersedeas bond --

9 THE COURT: Right.

10 MR. SIMMONS: -- you put -- I have to retrieve
11 two bonds of \$50,000 apiece --

12 THE COURT: No.

13 MR. SIMMONS: -- according to your order.
14 From what they're telling me downstairs --

15 THE COURT: I don't think that's correct.

16 MR. SIMMONS: And on the other hand, in front
17 of -- Judge, in the other part of your order it
18 states for me to pay a cash bond and then turn around
19 and give Attorney Berlinsky his client, \$53,000 in
20 cash. When I went downstairs -- I have someone who
21 was going to pay the supersedeas bond, but when he
22 called the Court -- first the Court told him that he
23 wasn't able to establish that. Then when I came to
24 the courthouse they told me that you ordered -- they
25 told me that you ordered that there had to be two

1 supersedeas bonds.

2 THE COURT: That information is incorrect.
3 The statute that's on point to stay a judgment on the
4 sale or delivery of land is one bond with two
5 sureties thereon. Okay?

6 MR. SIMMONS: They said they looked up the
7 Court and the Court said he had to provide two surety
8 bonds from two different banks.

9 THE COURT: Well, I don't think that's
10 correct. Let's see if we can clear that up. Okay?

11 MR. SIMMONS: Another issue --

12 THE COURT: Let me ask this question right off
13 the bat. I heard you say that somebody was willing
14 to pay the \$53,000 or whatever it was, just to pay
15 the amount of the money into the Court?

16 MR. SIMMONS: Yes. They were willing to bring
17 cash to the Court, but I don't know where I stand now
18 with it.

19 THE COURT: All right. Let me stop and let me
20 turn -- Mr. Berlinsky, is your client willing to take
21 that in order to stay the sale? The case has now
22 been filed for an appeal, so that's what's got us
23 here as I understand it.

24 MR. BERLINSKY: Correct. He's filed an
25 appeal, and the way I read the posting of the bond

1 statute, he just has to post a bond for one and a
2 half times the amount of the judgment or pay us off
3 and be done with the case.

4 THE COURT: Right.

5 MR. BERLINSKY: I think that's what the
6 statute says, one and a half times.

7 THE COURT: No. The statute doesn't even say
8 that. There's a statute that says that, but not the
9 one that I rely on. I'm at 18-9-170, which in order
10 to stay the sale you post a bond. The Court sets the
11 bond. I think I previously set the bond in the order
12 at 50,000. It requires two sureties. In other
13 words, it requires two people to say if something
14 happens to a property then they would step up and pay
15 that amount of money. It's not two bonds. It's one
16 bond, but it requires two sureties in order to
17 sustain that.

18 MR. SIMMONS: Well, downstairs --

19 THE COURT: I understand you were meeting with
20 the clerk's office down there.

21 MR. SIMMONS: I don't know if Berlinsky had
22 notified you that they have received the money from
23 the bankruptcy, almost -- a little over \$7,000.

24 THE COURT: That wouldn't do it.

25 MR. SIMMONS: No. I'm not saying that's what

1 it is, but there needs to be a recounting, to
2 recalculate what the correct amount should be because
3 since I filed my appeal, sent it to bankruptcy, they
4 haven't seen -- this client has received 7,000 and --

5 MR. BERLINSKY: Your Honor, I'm not sure what
6 the amount is. We --

7 MR. SIMMONS: I have it right here.

8 MR. BERLINSKY: We are doing an accounting
9 now. I didn't have time to do it because it was set
10 so early in the morning. Certainly I'm going to give
11 him credit for whatever he's paid.

12 THE COURT: Sure.

13 MR. BERLINSKY: But he's still got to post a
14 bond.

15 MR. SIMMONS: This says, \$7,346.

16 THE COURT: That came from the Bankruptcy
17 Court?

18 MR. SIMMONS: Yes. I also put in a motion for
19 a change of venue for this case to be heard before a
20 different judge because I didn't feel as though I
21 could get a fair trial in front of you.

22 THE COURT: Well, that's going to present you
23 with a problem because I think the sale is set for
24 tomorrow. If you're asking me to recuse myself
25 because of whatever problem I'll do that, but you're

1 going to have a problem getting it -- at this point
2 in time you need to be able to stop the sale,
3 Mr. Simmons.

4 You can do that one of two ways. One, you can
5 pay the judgment. They accept the amount of money
6 and the case is over. You still get to pursue your
7 appeal. Okay? Hear me out.

8 You can still pursue your appeal. If you win
9 on the appeal then I suspect they would owe you the
10 money back. Okay? That's one avenue. That's the
11 question I asked Mr. Berlinsky. I don't know if he's
12 got the ability or the authority to accept that.
13 Okay?

14 The other one is: You may follow the statute,
15 and you may post a bond with two sureties. Okay?
16 That's what the statute says. Now, I know from
17 practical experience it's difficult to find that.
18 It's not two bonds. It's one bond with two sureties.

19 MR. SIMMONS: Well, I did find someone who was
20 going to do the surety bond for me. My other
21 associate came forward and contacted the bond people,
22 who were going to do this supersedeas bond, and they
23 sent me the paperwork.

24 THE COURT: Okay.

25 MR. SIMMONS: When he came to the Court --

1 first they said, Contact the Court. The Court is
2 saying that they need some kind of form in order to
3 do a surety bond from the Court. He came to the
4 Court and then found -- they said that he can't do it
5 and they don't know what form he's talking about.

6 Then I spoke with him. He came -- no, I came
7 to the Court. He told me about it. I talked to the
8 people downstairs. The guy told me that if he brings
9 cash to the Court they'll put it in the safe
10 downstairs and they'll hold it until the appeal runs.
11 Then I told him -- he contacted the Court. He said,
12 No. They said, That's incorrect.

13 I came back to the Court again. Then he told
14 me that he contacted you and you told them that I had
15 to have two surety bonds from two different banks
16 which would come up to \$100,000.

17 THE COURT: That information is not correct.
18 Okay? That's all I can tell you.

19 MR. SIMMONS: Right now that's put me in a
20 very awkward situation because now I don't know if
21 this person is going to step forward again. He's
22 thinking there's too much confusion going on.

23 THE COURT: Well, that's what got us here
24 today.

25 MR. SIMMONS: The point -- what I'm getting

1 at -- okay -- since -- I'm not saying -- you said you
2 don't want to retry this and all that kind of stuff,
3 but I want to mention on the record that from day one
4 since this case was filed Berlinsky went in front of
5 Judge Dennis and told Judge Dennis that I never
6 answered the Court.

7 Judge Dennis did a default order on me based
8 on what Berlinsky told him. All right? I was served
9 the paper in April, and I answered the claim in
10 April. All right? The records of the Court shows --
11 the record came from downstairs and the Clerk of
12 Court office showed that when I was served -- it says
13 I was served on April 3rd, and it also showed that I
14 answered on April 24th. So I don't know what went on
15 between Berlinsky and Judge Dennis. Okay?

16 I don't know if Berlinsky sat there and he
17 told Judge Dennis a lie in order to get this case in
18 default which deprived me of all of my rights. Since
19 we've been before you you have denied me everything.
20 You denied all the motions. You denied me a jury
21 trial. You denied everything.

22 As far as I know this is fraud because Judge
23 Dennis -- even if Berlinsky even told him I never
24 answered the Court he should have took it upon
25 himself to check the record and see if I answered the

1 Court or not.

2 So that deprived me of all my rights. That
3 deprived me of due process under the constitution of
4 a jury trial.

5 THE COURT: All right.

6 MR. SIMMONS: So because of that I will --
7 those are one of the reasons why I requested a change
8 of venue for today so it can go before a circuit
9 judge so we can straighten out this matter.

10 THE COURT: My recollection is we had a
11 hearing -- a full-blown hearing.

12 MR. BERLINSKY: We had two full-blown
13 hearings, Your Honor. He had counsel at both
14 hearings. There was no default.

15 MR. SIMMONS: No. He claimed that at the
16 default hearing that we were supposed to have had in
17 front of Judge Dennis -- I was there and he was
18 there. I have never been to a hearing in front of
19 Judge Dennis. So all of that is nothing but based on
20 lies.

21 THE COURT: Okay.

22 MR. SIMMONS: I just want my fair shake in
23 this Court. This is supposed to be a Court about
24 justice. I'm being deprived of a jury trial based on
25 lies.

1 THE COURT: Mr. Simmons, here's what I'm going
2 to do. This order is now -- well, the foreclosure
3 decree is over two years old, May of '16.

4 MR. SIMMONS: I don't think it's never too
5 late to get justice.

6 THE COURT: The Order and the Motion to Amend
7 was entered September 1 of '16. That's the order
8 that set the bond. That was two years ago. So the
9 Court gave at that time really two options. I don't
10 know what happened. I guess -- I don't know whether
11 there was a bankruptcy or there was an appeal filed
12 at the time, but anyway -- this thing set the sale
13 for September 6th of '16 and then gave you, as the
14 Defendant, two options.

15 One was the payment at that time of \$52,174.32
16 to halt the sale; or two, you could post a bond
17 pursuant to the statute, which is 18-9-170 where you
18 can post a bond to stop the sale. I just went ahead
19 and set the bond at \$50,000. Okay? So that's
20 essentially the amount of the judgment.

21 MR. SIMMONS: See, the problem is --

22 THE COURT: And nothing has changed since then
23 that I can see.

24 MR. SIMMONS: See, if I have my opportunity to
25 have a jury trial, of which I was deprived, I would

1 have had a better chance of basically winning this
2 case but for the fact that every time his client has
3 brought a case against me, I've always been \$9,000
4 paid up in advance. I even came before you showing I
5 was paid up in advance. When we came before you his
6 client had received 21 advance payments of \$500
7 apiece money orders.

8 His client didn't pay the bills, did
9 everything with my money, and because I didn't come
10 and make advance payment No. 22 you faulted me. That
11 isn't right. Our contract states that I can make
12 payments in advance and not be found in default.
13 You-all turn right around and you-all rewrite my
14 contract. You-all turn right around and dissect
15 Judge Nicholson's order. You-all pick out certain
16 things in Judge Nicholson's order in order to find a
17 reason for this case to go against me more than to go
18 toward me.

19 So I think I deserve a jury trial even if this
20 case has to be reheard by a circuit judge, a higher
21 judge.

22 THE COURT: I assume that's the basis of your
23 appeal; is that right?

24 MR. SIMMONS: That's part of it.

25 THE COURT: Okay.

1 MR. SIMMONS: This whole case is based on a
2 fraud from day one. The contract between me and this
3 guy, Livingston, made an agreement between two
4 gentlemen. Mr. Livingston agreed to it. We've spent
5 years doing things the way we did it. Judge
6 Nicholson ordered for us to go back as we were even
7 though he made this an installment sales contract.

8 THE COURT: Mr. Simmons, here's my Ruling. I
9 have received your motion. I think it was filed on
10 the 1st of August. We set it today because I think
11 the property is set for sale tomorrow morning at
12 11:00 a.m.

13 All I'm going to do is I'm going to reiterate
14 my prior orders, which is the order of foreclosure
15 and sale entered May 18 of 2016, and then the order
16 on the Motion to Alter or Amend which is entered
17 September 1st of 2016, and under that in order to
18 stay the sale you have two options.

19 One is to pay the amount of money set forth in
20 the order. At that time it was \$52,174.32. You have
21 some type of credit for those payments that were paid
22 through the Bankruptcy Court, the \$7,000 figure. You
23 can pay that amount of money. I'm sure that judgment
24 has accrued interest. You will have to get with
25 Mr. Berlinsky on what that is.

1 Two, the other option, the Court has already
2 set the bond. I set the bond at \$50,000. I have not
3 required you to do anything other than the statute
4 which is cited in the order, and that's 18-9-170. It
5 sets forth the basis for the Court to set the bond.
6 It set the appellants not to commit any waste on the
7 property, pay a reasonable rental value for the use
8 of the land during the time of the appeal, and the
9 judgment amount should not exceed the amount of the
10 deficiency. So that's why the bond is set for
11 \$50,000. It does not require two bonds. The statute
12 only requires one bond, but it requires two sureties.
13 Okay?

14 MR. SIMMONS: I don't understand. What is two
15 sureties?

16 THE COURT: Two people willing to say that
17 they would pay that amount of money in the event that
18 there was a problem. So I would think that if you
19 could post that amount of cash with the Court that
20 that would suffice. Okay?

21 That's not what the statute says. You can
22 either pay the money over and you will stop the sale,
23 and you can continue with your appeal, or you satisfy
24 the language of the statute.

25 MR. SIMMONS: Okay. I'm saying that even

1 though this Court has now put me in an awkward
2 position with the person who is willing to help me,
3 would it be a problem for you-all to put the sale off
4 until a later date so I can have time to talk to this
5 guy so we can get this thing resolved?

6 THE COURT: Mr. Simmons?

7 MR. SIMMONS: It wouldn't be no more than --
8 their case was under fraud anyway.

9 THE COURT: I set the sale for like September
10 of 2016. I think two years is plenty of time. Okay?

11 MR. SIMMONS: No. This is totally different.
12 This is a newcomer who has come forward. All right?

13 THE COURT: When you get your newcomer, that's
14 not within my jurisdiction. Okay?

15 MR. SIMMONS: Yes. But the Court last week
16 was giving all the wrong information downstairs.
17 They said they called you and you advised them to say
18 these things.

19 THE COURT: Well, I can tell you that the
20 information that you're giving me is incorrect.

21 MR. SIMMONS: Well, they said that you said
22 it. They said they called you on the phone and
23 talked to you about it.

24 THE COURT: And we call that hearsay in the
25 courtroom. Okay?

1 MR. SIMMONS: Oh, that's hearsay?

2 THE COURT: There's a statute out here. I'm
3 looking right at it. It's a statute that --

4 MR. SIMMONS: They said they looked up your
5 statute and your statute said that you have to have
6 two bonds from two banks of \$50,000, which would have
7 been \$100,000, which didn't make no sense to me.

8 Actually, really if you calculate my contract
9 to what me and Mr. Livingston agreed on, the balance
10 I owe is around \$25,000 at this time.

11 THE COURT: Mr. Simmons, I understand you want
12 to relitigate the case. I understand that.

13 MR. SIMMONS: I think it would be no more than
14 fair for you -- even if you put it off for another
15 month. It isn't hurting nobody. The building ain't
16 going nowhere. If I could pick it up and leave I
17 could run out of Charleston with it. It wouldn't
18 hurt.

19 THE COURT: I understand. I'm not doing
20 anything different today than I did on August 31,
21 2016. That order has not changed, and my position
22 has not changed.

23 MR. SIMMONS: That's the reason I put in a
24 request for a change in venue because I knew that you
25 wasn't going to work with me. I mean, you told us of

1 your favoritism toward the Plaintiff.

2 THE COURT: I understand, Mr. Simmons.

3 Mr. Simmons, if you would like to go to a circuit
4 judge and see if they'll change or alter the bond,
5 you're free to do that, but I just don't think you're
6 going to get that done. Okay?

7 MR. SIMMONS: Under fraud?

8 THE COURT: If --

9 MR. SIMMONS: In order to get the upper hand
10 on this case?

11 THE COURT: Mr. Simmons, thank you very much.
12 I'm going to deny the motion. Thank you. Take a
13 look at your numbers. You can get in touch with him
14 if you-all are communicating straight if not that's
15 fine.

16 MR. SIMMONS: I would like a transcript,
17 please, of today's hearing.

18 THE COURT: I'm sorry?

19 MR. SIMMONS: I'm just telling your court
20 reporter that I would love a copy of the transcript
21 of today's hearing.

22 THE COURT: If you will get with her you-all
23 can make arrangements. Thank you.

24 (The proceedings were concluded at 10:24 a.m.)

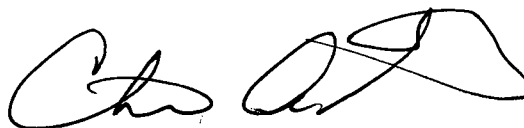
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 8th day of May, 2019 at
13 Charleston, Charleston County, South Carolina.
14

15
16
17 

18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 Allen Livingston,
5 Plaintiff,
6 vs. CASE NO. 2014-CP-10-1635
7 Harold Simmons, Jr.,
8 Defendant.
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Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:49 a.m. on
August 7, 2018 at 100 Broad Street, Courtroom 2A,
Charleston, South Carolina.

COPY

Christine A. Smith, Court Reporter

Master-in-Equity

P.O. Box 30276

Charleston, South Carolina, 29417

(843) 958-5071

casmith@charlestoncounty.org

1 APPEARANCES OF COUNSEL:

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10 ATTORNEYS FOR THE DEFENDANT:

11 Harold Simmons, Pro Se
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P R O C E E D I N G S

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THE COURT: We're back on the record in the case captioned Allen Livingston as Plaintiff versus Harold Simmons, Defendant. The case number is 2014-CP-10-1635. We were on the record yesterday on Mr. Simmons' Motion to Stay the Sale.

I will tell you, gentlemen, that I entered a Form 4 order yesterday which basically said what I said, that the status quo would remain. The case is scheduled for sale at 11:00 a.m. I was informed this morning that Mr. Simmons was here and wanted to pay some money to stop -- significantly to stop the sale and/or settle the case.

Mr. Simmons, tell me where you are this morning and what you've got.

MR. SIMMONS: So I called Berlinsky's office yesterday, and they told me a total the first time. The total was -- after they did the deduction of the money already prepared through the bankruptcy --

THE COURT: Bankruptcy Court, right?

MR. SIMMONS: They quoted me a total of \$47,640.40. That happened around 2:00 -- 2:19 yesterday.

THE COURT: Okay.

1 MR. SIMMONS: Then I got a call back from them
2 again which was at 5:00, and they quoted me another
3 price for \$60,212.97, which that made it like
4 practically -- once my people -- I was able to
5 accumulate the 47,000, and then I had to turn around
6 and try to find a way to find the additional money
7 which I did find the additional money.

8 I called and spoke with Mr. Berlinsky earlier
9 this morning. I called the office yesterday to let
10 him know that I will have the 60,000 and some change
11 today. His office called me back and -- well, they
12 told me -- they called me back and I told them I have
13 it and I would meet them at the courthouse.

14 THE COURT: All right. I have sales coming up
15 in a few minutes. So then you have two checks; is
16 that what you've got?

17 MR. SIMMONS: Yes, I have two checks.

18 THE COURT: And can you give me the amounts
19 for each of them just so I have it clear?

20 MR. SIMMONS: One is \$47,640.40 and the next
21 one is \$12,632.57.

22 THE COURT: Very good. Okay. And
23 Mr. Berlinsky, you acknowledge that you've gotten two
24 numbers? Can you tell me what that was?

25 MR. BERLINSKY: That's actually -- I think the

1 checks are -- are they made out to my trust account?

2 MR. SIMMONS: You and Mr. Livingston.

3 MR. BERLINSKY: Yes. They're made out to the
4 trust account. I will have to mail Mr. Simmons a
5 little refund because he's got an extra --

6 THE COURT: Is there \$60 extra in there? I
7 was just looking at the amount.

8 MR. BERLINSKY: Yes, it looks to be. Yes.
9 Let's see. 28 and 32 -- it would be about 60, yes,
10 sir. There is 60 extra so I will just mail him a
11 check for the difference when I run this through my
12 trust account.

13 THE COURT: All right. So you're going to
14 convey those? You've got certified funds, I'm
15 assuming?

16 MR. BERLINSKY: Yes. These are cashier's
17 checks.

18 THE COURT: Cashier's checks made payable to
19 Mr. Berlinsky's office and Mr. --

20 MR. SIMMONS: -- Livingston.

21 THE COURT: Livingston? And so are you-all
22 going to accept that in payment, in satisfaction
23 of -- does that satisfy the judgment?

24 MR. BERLINSKY: This satisfies the judgment
25 and satisfies the terms of the installment sales

1 contract. I think what I'll do is I'll have the
2 check for Mr. Simmons to pick up by Friday. I'll
3 call him to come to my office, and I'll have his deed
4 because by paying this off under the terms of the
5 agreement, we now are obligated to give him a deed.

6 THE COURT: Okay. So in return for that you
7 will be able to convey title to Mr. Simmons from
8 Mr. Livingston as well as this \$60 refund or whatever
9 the difference is?

10 MR. BERLINSKY: Correct. We're not certifying
11 title or anything. We're just going to provide the
12 deed to him that is required under the contract.

13 THE COURT: All right. Mr. Simmons, do you
14 understand that?

15 MR. SIMMONS: Yes.

16 THE COURT: That's acceptable to you, sir?

17 MR. SIMMONS: Yes.

18 THE COURT: Very good. Well, then based upon
19 that I will pull this from the sale today. It sounds
20 like you-all have an agreement as to resolving this
21 case. It doesn't --

22 MR. BERLINSKY: Well, we have an agreement as
23 to receiving payment --

24 THE COURT: Funds.

25 MR. BERLINSKY: -- and providing the deed, but

1 it doesn't resolve the issue of vacating the orders
2 in this, cancelling the lis pendens, and cancelling
3 the appeal.

4 THE COURT: All right. I just want to make
5 sure. The appeal remains active? The appeal is
6 on --

7 MR. SIMMONS: Yes.

8 THE COURT: -- in front of the Court of
9 Appeals as we stand right now?

10 MR. SIMMONS: Yes.

11 THE COURT: So the case will continue. In the
12 event -- Mr. Simmons, as I understand it, in the
13 event you are successful with that, then there may be
14 refunds or a way to get that back. You'd have an
15 accounting to do at that point in time. Okay?

16 MR. SIMMONS: Yes.

17 THE COURT: Thank you-all. Thank you-all for
18 working that out. Very good.

19 I'll pull it. I'm going to go on upstairs.
20 Mr. Berlinsky, that will probably do it unless you
21 have something else up there you need to deal with.

22 MR. BERLINSKY: No, that's all. I am on my
23 way.

24 THE COURT: We'll do a second form order just
25 noting that this is what we've done. I'll note that

1 the appeal is still active -- remains on appeal and
2 we'll go from there. In return for the funds the
3 Plaintiff is going to convey over the title (sic) and
4 any refund that may be due. I will do the math in a
5 Form 4. Thank you very much. Very good.

6 (The proceedings were concluded at 11:00 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 8th day of May, 2019 at
13 Charleston, Charleston County, South Carolina.
14

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16 
17

18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021.
22
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25

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant:

EXHIBIT Y

Harold Simmons, Jr. Pro Se
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Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ALLEN LIVINGSTON,)

Plaintiff,)

versus)

HAROLD SIMMONS,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-01635

ORDER

FILED
2015 APR -8 AM 11:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY LS

1 THIS SUIT was brought as a result of a breach of an installment Sales Contract
2 and foreclosure of said Installment Sales Contract.

3 This action was commenced by the filing of a Lis Pendens, Summons and
4 Complaint in the office of the Clerk of Court for Charleston County on March 11, 2014.

5 The Defendant was personally served as evidenced by the Affidavit of Service
6 filed herein.

7 Thereafter, on June 2, 2014, by Order of the Honorable R. Markley Dennis, Jr.,
8 this matter was referred to me to take testimony, make findings of fact and conclusion on
9 law, and enter a final order with all appeals to the Supreme Court of South Carolina.

10 On December 17, 2014, a hearing was held at which testimony was taken and
11 evidence offered. Attending were Bruce A. Berlinsky, Esquire, attorney for the Plaintiff;
12 the Plaintiff, the Defendant; and J. Seth Whipper, Esquire, attorney for the Defendant.

13 All of the parties were give due notice of today's hearing.

14 After consideration of the testimony and the evidence, the Court makes the
15 following Findings of Fact and Conclusions of Law:

16 1. This is an action for the foreclosure of an Installment Sales Contract on
17 property located on Charleston County, South Carolina, which is more fully described as

MS

Lot 17, Blk I, Chicora Place, Charleston County, SC, TMS No.: 469-16-00-329 and is within the jurisdiction of this Honorable Court.

2. That on or about June 15, 2000, Plaintiff entered into a Lease to Buy Agreement with Defendant for the aforesaid property.

3. That on or about February 7, 2013, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of \$500/month under the Installment Sales Contract until the balance of \$37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 7, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 27, 2013, Order became the Final Order and this Court is not free to go behind Judge Nicholson's Order. *which found Δ Simmons entitled to a credit of \$87,540.00*

4. That pursuant to Judge Nicholson's Order and South Carolina Code Section 29-3-630 (1976, as amended) the debt secured by the aforesaid Installment Sales Contract was established at \$37,460.00. *in payment on the contract.*

5. That pursuant to Mr. Simmons testimony, he has made no payments since the appeal was dismissed on December 3, 2013. However, I do find that prior to the dismissal of the appeal; Mr. Simmons made nine (9) payments of \$500.00 each for total payments of \$4,500.00 leaving a balance of \$32,960.00.

6. I find that notwithstanding the aforesaid payments, that Mr. Simmons is \$9,500.00 in arrears for payments due and owing as of the date of today's hearing.

7. That the Installment Sales Contract further provides that Defendant, Harold Simmons, is responsible for all taxes on the property beginning June 15, 2000,

X

and that pursuant to Mr. Simmons's testimony, he has made no payment or reimbursement towards these taxes. I further find that the Plaintiff has paid all of these taxes on Mr. Simmons' behalf.

8. South Carolina Code Section 29-3-30 (1976, as amended) provides the Mortgagee is entitled to pay property taxes and have a lien on the property for reimbursement of said taxes.

9. I find that Plaintiff has paid on behalf of Defendant, Charleston County Property Taxes, for the years 2001-2014 in the amount of \$16,540.54.

10. I find that the appeal did not stay the Defendants obligation of making payments under the Installment Sales Contract and that there were no prepayments on the debt prior to Judge Nicholson's Order.

11. I find that the Lease Agreement does not provide for recovery of attorneys' fees. Therefore, each party shall be responsible for payment of their respective attorneys' fees.

12. I conclude that the Defendant is in default and the Plaintiff is entitled to foreclosure of the Installment Sales Contract. However, notwithstanding this conclusion, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of \$9,500.00 by December 31, 2014, or payment of \$10,000.00, which includes the January payment, so long as the said \$10,000.00 payment is made within thirty (30) days of the date of this hearing. *See Lewis v. ^{Premier} Investment, 351 SC 167, 528 SE2d 361 (2002)*

13. I further conclude that the Defendant shall reimburse Plaintiff the total sum of \$16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of \$275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant.

MS

14. I conclude that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and that the Plaintiff is entitle to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sale of foreclosed properties; and it is further

ORDERED, ADJUDGED AND DECREED, Defendant has the option to reinstate the Installment Sales Contract by payment to the Plaintiff of \$9,500.00 by December 31, 2014, or payment of \$10,000.00, which includes the January payment, so long as the said \$10,000.00 payment is made within thirty (30) days of the date of this hearing; and it is further

ORDERED, ADJUDGED AND DECREED, that Defendant shall reimburse Plaintiff the total sum of \$16,540.54 for 2001-2014 Charleston County property taxes paid and that said reimbursement shall be made at the rate of \$275.00/month beginning January 1, 2015, for a period of sixty (60) months, with taxes for the year 2015 until the Installment Sales Contract is paid in full to be paid by the Defendant; and it is further

ORDERED, ADJUDGED AND DECREED, that should the Defendant not reinstate the Installment Sales Contract as morefully described hereinabove, the property will be sold at the first available sales date as established by this Court; and it is further

60 days following entry of this order.

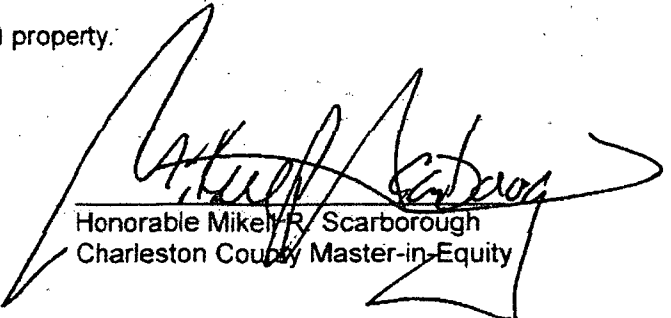
ORDERED, ADJUDGED AND DECREED, that the Sherriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the

[Signature]

Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property.

AND IT IS SO ORDERED

Charleston, South Carolina
4/2 2015.


Honorable Mikell R. Scarborough
Charleston County Master-in-Equity

*None pro fine
to Dec 31, 2014*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

PLAINTIFF,

versus

HAROLD SIMMONS,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-01635

**ORDER ON MOTION TO
ALTER AND AMEND**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2016 SEP - 1 PM 3:39

FILED

THIS MATTER was brought before me pursuant to Defendant's Motion to Alter and Amend Order; said Order being entered May 18, 2016.

On August 11, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

Prior to my taking up the issues presented by Defendant's Motion, all parties waived notice and desired to move forward on Defendant's Request for Jury Trial, which was filed with the court June 10, 2016. Defendant argued that he initially requested a jury trial in his Answer filed April 24, 2014. However, Plaintiff filed a Motion to Strike all of the jury trial issues presented in Defendant's Answer and Counterclaim. An Order striking all of Defendant's counterclaims was filed August 12, 2014 and based upon the Order granting Plaintiff's Motion to Strike, there were no counterclaims or defenses that were left entitling Defendant to a jury trial. In fact, after the August 12, 2014 Order was granted, the only cause of action remaining was foreclosure of the Installment Sales Contract, which is equitable in nature. In addition to the foregoing, the Defendant

appeared throughout the litigation, both pro se and with counsel, and participated in all trials and hearings before the court never raising the issue until June 10, 2016, which is after all Orders, including the Final Order, in the matter had been issued.

I find that Defendant's appearance and participation in all trials and hearing before this court, without raising the issue of jury trial during said trials and/or hearings, results in a waiver of the same.

Thereafter, I took up Defendant's Motion to Alter or Amend Order.

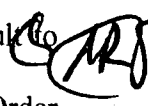
After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. The Rule to Show Cause was properly before this court and concerned my Order. Defendant asserts that any Rule needed to be filed pursuant to Judge Nicholson's Order in the 2010 case. Judge Nicholson's Order dealt with the issue establishing that the Agreement between the parties amounted to an Installment Sales Contract, as opposed to a Lease with option to purchase. Judge Nicholson's Order also established the remaining debt and the monthly payments to be made. Judge Nicholson's Order was appealed but the appeal was dismissed and Judge Nicholson's Order became the final Order in the 2010 case. The Rule to Show Cause that came before me was based on noncompliance with the Order of this court filed April 8, 2015, and to establish the foreclosure of the Installment Sales Contract. Therefore, the Rule to Show Cause was properly filed with this Court.

2. I find that the amortization schedule submitted attempted to go behind Judge Nicholson's February 23, 2013, Order, which became the law of the case and this court is not free to go behind Judge Nicholson's Order. The amortization schedule



required by both Judge Nicholson's Order and by my Order was intended to illustrate the outstanding indebtedness established by Judge Nicholson's Order and reestablished by my April, 2015 Order. Based on the foregoing, Defendant failed to satisfy the requirements of providing a proper amortization schedule pursuant to the terms and conditions of both Judge Nicholson's Order and my Order.

3. I find that there is no justification to adjust the property tax claim as the obligation to pay property taxes was ^{remains} still due and Defendant did not go into default  to make the claim "ripe" until he failed to pay pursuant to Judge Nicholson's Order resulting in the filing of this action.

4. This action was not filed prematurely and the court does have jurisdiction to issue any and all Orders herein. The 2010 case heard by Judge Nicholson which established the agreement between the parties as an Installment Sales Contract and established the balance due and the monthly payments to be made going forward from Judge Nicholson's February 27, 2013, Order became the final Order in the case upon the dismissal and Order issued by the Court of Appeals filed December 3, 2013. The Defendant, by his own admission and testimony, indicated that he had not made any payments on the Installment Sales Contract other than the Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars for which he has been given due credit under my April 8, 2015 Order. Again, Defendant continues to argue that he has prepaid on the Installment Sales Contract. The fact that Defendant may have prepaid towards the total purchase price prior to Judge Nicholson's Order becoming final does not relieve Defendant from his monthly obligations. Mr. Simmons's own testimony was that he has not made any payments since the appeal was dismissed on December 3, 2013.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

Therefore, it is hereby,

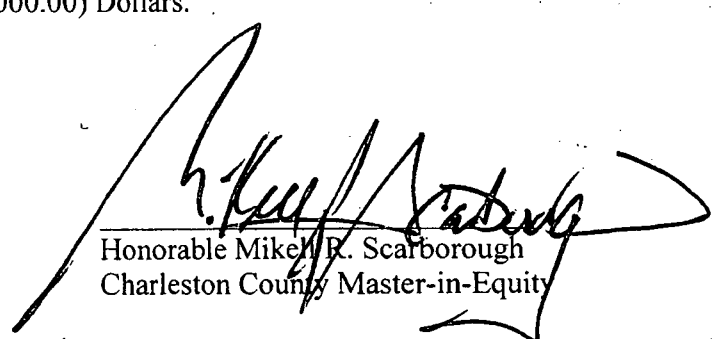
ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter and Amend Order is hereby denied; and, it is further

ORDERED, ADJUDGED AND DECREED that the Master's Sale on the foreclosure of the Installment Sales Contract shall take place as scheduled on September 6, 2016 at 11:00 a.m. pursuant to the terms and conditions of my May 18, 2016 Order; and, it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff of the sum of Fifty Two Thousand One Hundred Seventy Four and 32/100 (\$52,174.32) Dollars prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED pursuant to *SC Code § 18-9-170* (2014) and pursuant to Order of SC Court of Appeals filed July 29, 2016, the Defendant can post a bond to stop the Master's Sale of foreclosure, said bond being set in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars.

AND IT IS SO ORDERED!



Honorable Mikel R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

Aug. 31 2016.

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2. ~~That~~ That on or about February 27, 2014, the Honorable J.C. Nicholson, Jr. entered an Order in a case involving the same parties hereto (2010-CP-10-8027) in which he ruled that the Lease to Buy Agreement between Plaintiff and Defendant referenced hereinabove was to be considered an Installment Sales Contract and that the Defendant was to make payment of \$500/month under the Installment Sales Contract until the balance of \$37,460.00 was paid in full. Further, the aforesaid Order of Judge Nicholson was appealed and the appeal was dismissed thereby rendering the February 27, 2013, Order referenced hereinabove the Final Order in this case, as evidenced by Order of the Court of Appeals filed December 3, 2013. As such, Judge Nicholson's February 23, 2013, Order became the ^{law of the case} ~~Final Order~~ and this Court is not free to go behind Judge Nicholson's Order, which Order is res judicata and which found Defendant, Simmons was entitled to a credit of \$87,540.00 in payments on the Installment Sales Contract.

3. I further find that my Order filed April 8, 2015, in this case reset the debt due under the Installment Sales Contract giving Defendant Simmons credit for nine payments of \$500.00 each leaving a balance of \$32,960.00 due on the Installment Sales Contract (see Order for details) and that the said Order was Nunc Pro Tunc to December 3, 2013.

4. I find that Simmons again argued that he has prepaid; the same argument put forth in the trial before Judge Nicholson and in the December 17, 2014 hearing before me. While he may have prepaid prior to Judge Nicholson's Order, the Installment Sales Contract, as well as Judge Nicholson's Order, require Simmons to make monthly payments. The fact that Simmons may have prepaid towards the total purchase price prior to Judge Nicholson's Order does not relieve Simmons from his monthly obligation.



5. That pursuant to Mr. Simmons testimony, not only has he made no payments since the appeal was dismissed on December 3, 2013, but he has made no payments since my April, 2015 Order. Further, Mr. Simmons testified that he has made no payments towards taxes either under the April, 2015 order or for tax year 2015 as required under the April, 2015 Order.

6. I find that the total outstanding debt due and owing to the Plaintiff is as follows:

Outstanding balance	\$32,960.00
2001-2014 Charleston County Property Taxes	\$16,540.54
2015 Charleston County Property Taxes	\$1,448.78
TOTAL DEBT	\$50,949.32

7. I find that the Defendant was required to provide an amortization schedule based on the outstanding indebtedness established by Judge Nicholson's Order and by my April, 2015 Order and failed to do so instead of providing an amortization schedule that went back prior to the establishment of the debt by Judge Nicholson's Order nor has Defendant made any monthly payments and, therefore, did not comply with either Judge Nicholson's Order nor my April, 2015 Order.

8. That Defendant's actions in failing to comply with either Judge Nicholson's Order or my April, 2015 Order is in direct violation of those aforesaid Orders resulting in Plaintiff having to bring this Rule to Show Cause and, as a result thereof, Plaintiff is entitled to recovery of his costs for this rule in the amount of \$1,225.00.

fees and

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9. I conclude that since the Defendant did not reinstate the Installment Sales Contract pursuant to my April, 2015 Order nor has he made any payments on the Installment Sales Contract since December, 2013 the property will be sold at the July 5, 2016 sales date if he has not paid all indebtedness more fully set forth in paragraph 6 hereinabove and reimbursed Plaintiff's attorney the sum of \$1,225.00 for Rule to Show Cause prior to the July 5, 2016, sale.

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10. I order that Defendant's prior Motion to Alter or Amend my April, 2015 Order is denied.

11. I confirm that Plaintiff's Motion to Amend the pleadings to conform to the evidence was granted at the December 17, 2014, hearing entitling Plaintiff to recover taxes paid and evidence of the amount of taxes paid was presented and introduced into evidence at that hearing.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED, there is due to the Plaintiff on the Installment Sales Contract the sum of \$50,949.32; and, it is further

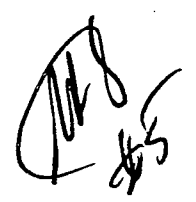
ORDERED, ADJUDGED AND DECREED, that the Defendant is in breach of the Installment Sales Contract and has failed to comply with the terms and conditions of Order filed in this case, April 8, 2015 and that the Plaintiff is entitled to foreclosure of the Installment Sales Contract pursuant to South Carolina Law and the customs and practices of this Honorable Court with regard to sales of foreclosed properties; and, it is further

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ORDERED, ADJUDGED AND DECREED, that on default of payment, the premises, described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Charleston County Courthouse, Charleston, South Carolina, on the July 5, 2011 sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

- a. FOR CASH: The Master in Equity shall require a deposit of five (5%) percent on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.
- b. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.
- c. This Installment Sales Contract constitutes a first priority lien on the subject property.
- d. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes; and, it is further

ORDERED, ADJUDGED AND DECREED, if Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Master In Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness; and, it is further



ORDERED, ADJUDGED AND DECREED, that the Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured; and, it is further

ORDERED, ADJUDGED AND DECREED, that the undersigned Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses if this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment of Plaintiff, or Plaintiff's Attorneys, of the amount of the Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of this Court; and, it is further

ORDERED, ADJUDGED AND DECREED, that in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving

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furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means; and, it is further

ORDERED, ADJUDGED AND DECREED, that the Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended; and, it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property; and, it is further

ORDERED, ADJUDGED AND DECREED, that out of the proceeds of the said sale, after payment of all Court costs involved in this action, that the net proceeds be disbursed to those persons whom this Honorable Court declares to have an interest in the subject property and that they be paid according to their interest and proportionate share in the subject property; and it is further

ORDERED, ADJUDGED AND DECREED, that Bruce A. Berlinsky is awarded an attorney=s fee in the amount of \$1,225.00 which includes costs and expenses incurred in bringing the Rule to Show Cause; and it is further

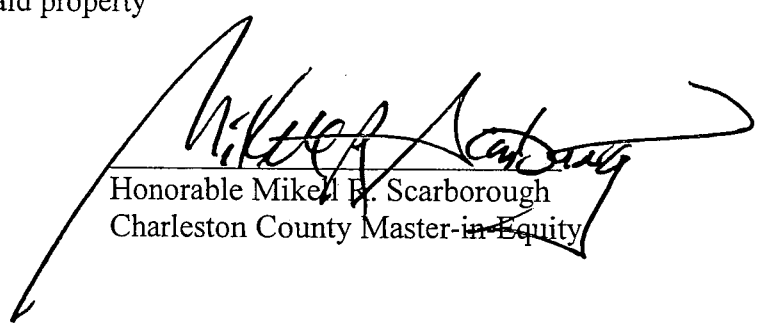
A handwritten signature, possibly 'MS', with the number '47' written below it.

ORDERED, ADJUDGED AND DECREED, that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff the sum of \$52,174.32 prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED, that the Sheriff of Charleston County put the Plaintiff or the successful bidder in possession of the said premises and that the Defendant, or anyone claiming by, through, or under him be forever barred and foreclosed of any equity of redemption of said property

AND IT IS SO ORDERED

Charleston, South Carolina
May 6 2016.


Honorable Mike B. Scarborough
Charleston County Master-in-Equity

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ALLEN LIVINGSTON,)

PLAINTIFF,)

versus)

HAROLD SIMMONS,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-01635**ORDER ON MOTION TO
ALTER AND AMEND**2016 SEP - 1 PM 12:39
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

THIS MATTER was brought before me pursuant to Defendant's Motion to Alter and Amend Order; said Order being entered May 18, 2016.

On August 11, 2016, a hearing was held at which testimony was taken and evidence offered. Attending were Bruce A. Berlinsky, Esquire, Attorney for Plaintiff; the Defendant; and J. Seth Whipper, Esquire, Attorney for Defendant.

All of the parties were given due notice of today's hearing.

Prior to my taking up the issues presented by Defendant's Motion, all parties waived notice and desired to move forward on Defendant's Request for Jury Trial, which was filed with the court June 10, 2016. Defendant argued that he initially requested a jury trial in his Answer filed April 24, 2014. However, Plaintiff filed a Motion to Strike all of the jury trial issues presented in Defendant's Answer and Counterclaim. An Order striking all of Defendant's counterclaims was filed August 12, 2014 and based upon the Order granting Plaintiff's Motion to Strike, there were no counterclaims or defenses that were left entitling Defendant to a jury trial. In fact, after the August 12, 2014 Order was granted, the only cause of action remaining was foreclosure of the Installment Sales Contract, which is equitable in nature. In addition to the foregoing, the Defendant

appeared throughout the litigation, both pro se and with counsel, and participated in all trials and hearings before the court never raising the issue until June 10, 2016, which is after all Orders, including the Final Order, in the matter had been issued.

I find that Defendant's appearance and participation in all trials and hearing before this court, without raising the issue of jury trial during said trials and/or hearings, results in a waiver of the same.

Thereafter, I took up Defendant's Motion to Alter or Amend Order.

After consideration of the testimony and the evidence, this Court makes the following Findings of Fact and Conclusions of Law:

1. The Rule to Show Cause was properly before this court and concerned my Order. Defendant asserts that any Rule needed to be filed pursuant to Judge Nicholson's Order in the 2010 case. Judge Nicholson's Order dealt with the issue establishing that the Agreement between the parties amounted to an Installment Sales Contract, as opposed to a Lease with option to purchase. Judge Nicholson's Order also established the remaining debt and the monthly payments to be made. Judge Nicholson's Order was appealed but the appeal was dismissed and Judge Nicholson's Order became the final Order in the 2010 case. The Rule to Show Cause that came before me was based on noncompliance with the Order of this court filed April 8, 2015, and to establish the foreclosure of the Installment Sales Contract. Therefore, the Rule to Show Cause was properly filed with this Court.

2. I find that the amortization schedule submitted attempted to go behind Judge Nicholson's February 23, 2013, Order, which became the law of the case and this court is not free to go behind Judge Nicholson's Order. The amortization schedule

required by both Judge Nicholson's Order and by my Order was intended to illustrate the outstanding indebtedness established by Judge Nicholson's Order and reestablished by my April, 2015 Order. Based on the foregoing, Defendant failed to satisfy the requirements of providing a proper amortization schedule pursuant to the terms and conditions of both Judge Nicholson's Order and my Order.

3. I find that there is no justification to adjust the property tax claim as the obligation to pay property taxes ^{remains} was still due and Defendant did not go into default  to make the claim "ripe") until he failed to pay pursuant to Judge Nicholson's Order resulting in the filing of this action.

4. This action was not filed prematurely and the court does have jurisdiction to issue any and all Orders herein. The 2010 case heard by Judge Nicholson which established the agreement between the parties as an Installment Sales Contract and established the balance due and the monthly payments to be made going forward from Judge Nicholson's February 27, 2013, Order became the final Order in the case upon the dismissal and Order issued by the Court of Appeals filed December 3, 2013. The Defendant, by his own admission and testimony, indicated that he had not made any payments on the Installment Sales Contract other than the Four Thousand Five Hundred and 00/100 (\$4,500.00) Dollars for which he has been given due credit under my April 8, 2015 Order. Again, Defendant continues to argue that he has prepaid on the Installment Sales Contract. The fact that Defendant may have prepaid towards the total purchase price prior to Judge Nicholson's Order becoming final does not relieve Defendant from his monthly obligations. Mr. Simmons's own testimony was that he has not made any payments since the appeal was dismissed on December 3, 2013.

The Court being satisfied with its findings of fact and conclusions of law, it is the opinion that judgment should be entered thereon.

Therefore, it is hereby,

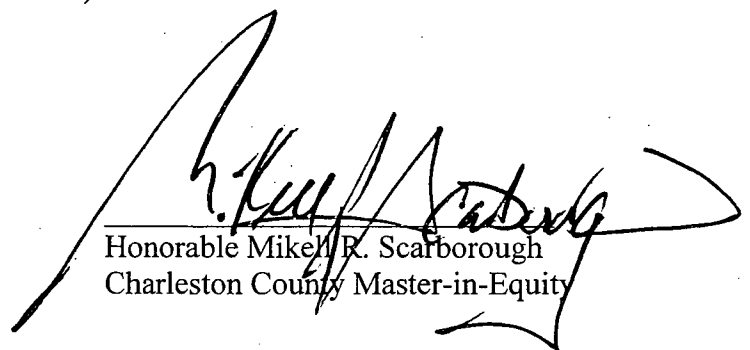
ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Alter and Amend Order is hereby denied; and, it is further

ORDERED, ADJUDGED AND DECREED that the Master's Sale on the foreclosure of the Installment Sales Contract shall take place as scheduled on September 6, 2016 at 11:00 a.m. pursuant to the terms and conditions of my May 18, 2016 Order; and, it is further

ORDERED, ADJUDGED AND DECREED that the Defendant has the option to avoid the foreclosure sale by payment to the Plaintiff of the sum of Fifty Two Thousand One Hundred Seventy Four and 32/100 (\$52,174.32) Dollars prior to the sale; and it is further

ORDERED, ADJUDGED AND DECREED pursuant to *SC Code* § 18-9-170 (2014) and pursuant to Order of SC Court of Appeals filed July 29, 2016, the Defendant can post a bond to stop the Master's Sale of foreclosure, said bond being set in the amount of Fifty Thousand and 00/100 (\$50,000.00) Dollars.

AND IT IS SO ORDERED!


Honorable Mikel R. Scarborough
Charleston County Master-in-Equity

Charleston, South Carolina

Aug. 31 2016.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT X

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

1 2/27/13. There's been some disagreement since that
2 time as to what's been paid or not paid. That's why
3 we're here today. That's what I see. Does that
4 sound correct from the Plaintiff and the Defense
5 perspective?

6 MR. WHIPPER: That's correct, Your Honor.

7 THE COURT: Very good.

8 MR. WHIPPER: I think also, Your Honor, we may
9 need to take up a matter. I think the jurisdiction
10 of the Court -- there's some questions as to the
11 jurisdiction of this Court. If I might be heard,
12 Your Honor, I'll state my concerns.

13 THE COURT: All right.

14 MR. WHIPPER: This order is an order that
15 controls an executory contract and an ongoing
16 relationship. I think that because of the nature of
17 the order, the nature of the remedies that have been
18 proposed means that what we have here instead of a
19 foreclosure is a matter of failure to comply with the
20 order.

21 As such it would be properly heard as a Rule
22 to Show Cause in the Court of Common Pleas before
23 Judge Nicholson. It is an executory order, an
24 executory contract. It is still under the
25 supervision of the Court. So I think that this just

1 occurred as you were speaking, Your Honor, as well as
2 I looked at the paperwork this morning that this is,
3 in fact, a case that really should be before Judge
4 Nicholson as a Rule to Show Cause, and I think that
5 therefore this Court lacks jurisdiction to hear this
6 Complaint is more in the nature of a Rule to Show
7 Cause for failure to follow the order.

8 I think that this matter has to be dismissed
9 as a foreclosure and remanded to the Court, to Judge
10 Nicholson, as a Rule to Show Cause.

11 THE COURT: Let me hear from you,
12 Mr. Berlinsky.

13 MR. BERLINSKY: I disagree, Your Honor. If
14 you read Judge Nicholson's order it was determined
15 that this lease to buy was to be treated and
16 interpreted as an installment sales contract. The
17 Supreme Court has ruled repeatedly that installment
18 sales contracts would be treated like mortgages and
19 must be foreclosed upon because there may be some
20 equity as a result of a foreclosure sale and the
21 Plaintiff may be entitled to it.

22 Judge Nicholson's order just said, It's an
23 installment sales contract, and this is what he's got
24 credit for, and this is what the future payments are
25 supposed to be. I'm not seeking to put him in jail

1 MR. WHIPPER: Our position again, Your
2 Honor -- this again, should be argued before Judge
3 Nicholson to decide from this point what happens next
4 for any alleged failures in performance. That's who
5 should make the final order. That's where it was to
6 begin with.

7 THE COURT: I can acknowledge the argument.
8 Why is it just now being presented to me, though?

9 MR. WHIPPER: Well, because Your Honor, in
10 fact, as we read information over the weekend in
11 preparing we realized -- wait a minute -- we're
12 not -- I was wondering -- I generally don't do
13 foreclosure cases. This isn't a foreclosure.

14 I'm here because I was a lawyer involved in
15 obtaining this order. This order requires that he do
16 certain things. He hasn't done any of these certain
17 things as alleged by the Plaintiff, but this order is
18 signed by Judge Nicholson. It's his order, and it's
19 his prescription of what's going to be happening, so
20 it should be before Judge Nicholson as a failure to
21 follow the order. It's not in the nature of a
22 straight foreclosure. Again, it has to be raised now
23 because it's essentially a subject-matter
24 jurisdiction. Does this Court have subject matter
25 jurisdiction of this order? It doesn't.

1 are seeking the remedy that would require them to go
2 in front of Judge Nicholson. What they seek is to
3 follow the law that Judge Nicholson has set forth in
4 that order which gives your client equitable interest
5 in the property meaning -- I think when it was in
6 front of him the question was, What type of agreement
7 do they have: Leasehold or installment sales
8 contract?

9 He found, I believe as a matter of law, that
10 it was an installment sales contract. So now the
11 Plaintiff seeks to foreclose under that installment
12 sales contract I assume having lost that argument in
13 front of Judge Nicholson. I can't really tell, but
14 that's what it seems to me to be. So it would appear
15 to me that this is a matter of equity, and that's
16 what the Plaintiff's are seeking today is equity, not
17 some contemptuous powers under a Rule to Show Cause.
18 The Plaintiff gets to choose how they wish to proceed
19 in that fashion.

20 MR. WHIPPER: I don't think so, Judge, with
21 all due respect. They have -- they're still in front
22 of Judge Nicholson. They go back to Judge Nicholson
23 and allege what they claim the problem is here, and
24 then it's up to Judge Nicholson to turn them down.

25 THE COURT: I think if they were saying that

1 rules in my client's favor and it goes to a sale, my
2 client may be entitled to reimbursement. I just want
3 to introduce into evidence -- you can rule as to what
4 is reimbursable or not. I want to establish that
5 taxes pursuant to this document have not been paid.

6 MR. WHIPPER: Your Honor, I don't see this is
7 relevant at all to what we're here for.

8 MR. BERLINSKY: An installment sales contract
9 is just like a mortgage.

10 MR. WHIPPER: It's not a mortgage either.

11 THE COURT: It's a little bit different from a
12 mortgage I agree, but as an installment sales
13 contract, the terms, I think this is the document
14 that Judge Nicholson determined was an installment
15 sales contract.

16 MR. BERLINSKY: That's correct.

17 THE COURT: I'm going to allow it. I'm going
18 to overrule the objection. I'll allow it.

19 Q. (BY MR. BERLINSKY) Since 2000 has Mr. Simmons
20 paid the taxes for this property to your knowledge?

21 A. No, sir.

22 Q. Who has paid those taxes?

23 A. I did.

24 Q. Okay. Are those tax receipts from the
25 treasurer's office?

1 There's no issue of fact that it's to be considered
2 an installment sales contract. There's no issue of
3 fact as to how the Supreme Court has ruled
4 installment sales contracts are to be treated.

5 THE COURT: All right. Thank you. Very good.
6 I'm going to deny both Motions for Directed Verdict.
7 There has been some proof at this point in time.
8 It's in evidence in the record that there's been
9 nonpayment of debt on the amount that was set by
10 Judge Nicholson's order and then of course on the tax
11 issue.

12 I've already ruled on the jurisdictional
13 question. I think this is the proper Court for the
14 issue of foreclosure of an installment sales contract
15 because our law is such that it's treated as if it is
16 a foreclosure of an equitable interest in property.
17 I find there is some evidence.

18 As to the Plaintiff's Motion for Directed
19 Verdict, I don't think that's proper at this point in
20 time. I will deny that one as well. All right? I
21 will state that I think Judge Nicholson's order is
22 the law in the case, in the 2010 case I think it was.
23 So it set the amount of the debt. What I have done
24 and what I'm willing to do would be to entertain any
25 evidence from the time of the trial, which you-all

1 presenting as a foreclosure under the Installment
2 Sales Contract. I understand that. Mr. Whipper, I
3 still think I am correct that I have jurisdiction
4 over that question. Okay?

5 I don't doubt that there may be an opportunity
6 for this matter to go back in front of Judge
7 Nicholson on the question of whether or not there's
8 contempt for failure to do certain things under the
9 order, but that's not really the question before me
10 today. Okay?

11 So the question before me today is, I see it
12 based on the testimony and the evidence in the
13 record. It's significant, and the significant
14 question for the Court is under Code Section
15 29-3-630. That is this: The debt secured must be
16 established before the sale by the mortgagee. All
17 right?

18 So the gist of Judge Nicholson's ruling was
19 that Mr. Simmons has an equitable interest in the
20 property, that it was not a simple lease agreement.
21 It was more than a lease. It was an installment
22 sales contract. As an installment sales contract
23 Mr. Simmons received an equitable interest in the
24 property by virtue of the payments which he made.
25 Okay? That decision was made and the Judge set a

1 for Contempt of Court. He's made no attempt to make
2 any payments since this order other than the three
3 payments that he has proof that my client
4 acknowledges. He has memory of three payments.

5 Seth has shown me receipts of three payments.
6 I don't think it's a Rule to Show case. Once he
7 ruled it's an installment sales contract I'm entitled
8 to foreclose.

9 THE COURT: This may help me. What has
10 transpired since the order was issued? It looked
11 like it might have bounced up on appeal and got --

12 MR. BERLINSKY: It went up on appeal, and the
13 appeal was dismissed. What has transpired since then
14 is starting after this February order, which it's
15 been 18 months since. The order is February of 2013.
16 It's been 18 months since then.

17 Judge Nicholson found in the last paragraph of
18 the order that the Defendant was giving Mr. Simmons
19 credit of 87,540 towards the purchase price of
20 125,000 with a balance of 37,460 to be paid on the
21 installment contract at a rate of 500 a month until
22 the balance is paid.

23 The Defendant was to obtain an amortization
24 schedule supplied to the Plaintiff, and he was
25 required to pay by money order or check with a

1 came up with this figure. All I'm doing -- what I'm
2 telling you is I'm taking his figure -- I don't
3 believe I'm at liberty to go behind that figure --

4 MR. WHIPPER: I would concur.

5 THE COURT: -- and I am applying those
6 payments that were made to that figure that we
7 acknowledge -- everybody has acknowledged has been
8 received -- that's \$4,500, or at least I find they've
9 been received, and then working from that number
10 forward. I don't know any other way to do that. I
11 understand your client's understanding or perception
12 that maybe he had prepaid, but I don't see a 20-year
13 pay schedule in here. I don't see a 15-year pay
14 schedule in here.

15 MR. WHIPPER: The only pay schedule -- of
16 course, Judge. I understand your position on that.
17 From this set I determine payment is set under this
18 agreement. He has up until a certain year to pay.

19 MR. BERLINSKY: The order -- it was appealed.
20 Everybody dropped the appeal. They let it become the
21 final order of the Court.

22 THE COURT: It's roughly a 20-year period if
23 you just do the math.

24 MR. WHIPPER: It's set out here anyway. It
25 has here --

1 THE COURT: Let me go back. So then what
2 relief -- the Plaintiff gets to pursue the relief
3 they want. What's the relieve that the Plaintiff
4 seeks, Mr. Berlinsky?

5 MR. BERLINSKY: Judge Nicholson's order
6 specifically defines this as an installment sales
7 contract.

8 THE COURT: I see that.

9 MR. BERLINSKY: The relief we seek is
10 foreclosure of the Installment Sales Contract for
11 failure to make any payments.

12 THE COURT: All right. Then I think --

13 MR. BERLINSKY: Notwithstanding that -- even
14 Seth's argument -- a Rule is not required to go back
15 before the Judge who initially hears it. Any Judge
16 can hear a Rule for not complying.

17 THE COURT: Let's restate the question. Are
18 you here on a Rule?

19 MR. BERLINSKY: I'm not here on a rule.

20 THE COURT: You're here on a Complaint, right?

21 MR. BERLINSKY: I'm here on a Complaint.

22 THE COURT: Complainant seeks foreclosure of
23 installment sales contract, nonjury.

24 Mr. Whipper, I acknowledge that your argument
25 has some merit, but I don't find that the Plaintiffs

1 A. The payments were made through the lawyer,
2 Barnwell. The money orders were made out to Barnwell
3 Law Firm and me. Mr. Barnwell would get the
4 payments, send the money order to me to sign, I would
5 send them back to him, and he puts it in an escrow
6 account.

7 Q. Do you recall how many payments you received
8 in that manner?

9 A. The only ones I can remember are about three.

10 Q. Okay. Now, since Mr. Barnwell's death in July
11 of 2013, has Mr. Simmons made any payments directly
12 to you?

13 A. No, sir.

14 Q. Has he contacted you?

15 A. No, sir.

16 Q. Has he made any attempt to discuss this debt
17 with you prior to your filing the lawsuit?

18 A. No, sir.

19 Q. Okay. Now, I'll call your attention to
20 Plaintiff's No. 2, and on Page 2 what does the next
21 to the last paragraph provide?

22 A. "Terms of payment, buyer, Harold Simmons
23 agrees to pay first year \$500 beginning"...

24 Q. No. The next to the last sentence, not the
25 last.

1 time?

2 A. Excuse me?

3 Q. Are you declaring the entire indebtedness as
4 set forward in Judge Nicholson's order of \$37,460
5 minus the three \$500 payments that you are aware of
6 payable in full at this time?

7 A. All he paid was three payments.

8 Q. What now?

9 A. All he paid from three payments.

10 Q. What I'm asking you is, are you declaring the
11 \$37,460 minus the three \$500 payments, the amount due
12 and payable to you at this time?

13 A. Yes, sir.

14 Q. Have you incurred any costs in the institution
15 of this action?

16 A. No, sir. Excuse me. Can I say something?

17 Q. No.

18 A. No? Okay.

19 MR. BERLINSKY: I don't have anything further
20 at this time. If you'll answer anything that
21 Mr. Whipper or the Court may have?

22 THE COURT: Mr. Whipper?

23 MR. WHIPPER: Just a few questions if it
24 please the Court.

25 THE COURT: Yes, sir.

1 MR. WHIPPER: I think that's all the questions
2 I have at this time. We do reserve the right to call
3 this witness in our case in chief.

4 THE COURT: Anything in follow-up?

5 EXAMINATION

6 BY MR. BERLINSKY:

7 Q. From September forward of 2012 through Judge
8 Nicholson's order, do you recall Mr. Barnwell
9 forwarding you any money orders or checks to endorse
10 over to him?

11 A. I'm sorry. I didn't understand that.

12 Q. From the date of the first trial, September 4,
13 2012, until Judge Nicholson's order in February of
14 2013, did Mr. Barnwell forward you any money orders
15 or checks to endorse back over?

16 A. No, sir.

17 MR. BERLINSKY: Thank you. I don't have
18 anything further at this time.

19 MR. WHIPPER: I do have some Recross.

20 Q. (BY MR. WHIPPER) Now, Mr. Livingston, you
21 don't keep any records at all, do you, of payments
22 being made?

23 A. Excuse me?

24 Q. You don't keep any records of Mr. Simmons'
25 payments to you, do you?

1 tells me that's \$9,500. Okay?

2 MR. WHIPPER: That's through December of --

3 THE COURT: Of '14. That's the current amount
4 due. Okay? So here is my solution. Here is my
5 proposal to you. The Defendant would have the option
6 to reinstate his mortgage, because that's what this
7 is now is a mortgage, for the sum of \$9,500. That
8 figure is going to be good for 30 days, but in 30
9 days it's going to be the sum of \$10,000. Okay?
10 Because January is coming due.

11 So the debt can be reinstated for \$10,000.

12 Okay?

13 MR. BERLINSKY: Okay.

14 THE COURT: And then that would be a credit.
15 That then gets treated as a credit, okay, on the
16 balance due. Here's where we have an issue that we
17 have to resolve between the two of you, and that is
18 on the taxes.

19 The contract says that the buyer is
20 responsible for taxes. The Judge's Order says that
21 the buyer's responsible for the payment of taxes and
22 the arrangements for insurance. We didn't have any
23 evidence about insurance today. We did have evidence
24 about taxes. I haven't run the math, but the figure
25 that was given to me was \$16,540.54. Okay?

1 THE COURT: We must be pretty close because
2 it's 2015, and I think it's about five years due. We
3 must be about all right on that.

4 MR. WHIPPER: 4/15/2021 is the date we have of
5 the term.

6 THE COURT: 4/15 what?

7 MR. WHIPPER: 2021.

8 THE COURT: Where are you finding that?

9 MR. WHIPPER: On Plaintiff's Exhibit 1 or 2.

10 MR. BERLINSKY: The contract itself,
11 Your Honor.

12 THE COURT: I see it. I'm now looking at
13 Plaintiff's 2 ending 4/15/2021. Okay. That's
14 different from Defendant's 6 for ID, and therein
15 lies -- one of things Judge Nicholson did was he
16 decided one of these was valid and one of these was
17 not.

18 MR. WHIPPER: That's correct.

19 THE COURT: I don't know which one he did, but
20 anyway 4/15/21.

21 MR. WHIPPER: That's what he decided.

22 THE COURT: That's about right. We're about
23 five and a half years out.

24 MR. BERLINSKY: We're pretty close.

25 THE COURT: I'm with you.

1 MR. WHIPPER: Judge, I'll be --

2 THE COURT: I'm going to ask Mr. Berlinsky to
3 prepare me an order along the lines of what I just
4 described and run that by you. You-all don't have to
5 agree on anything I do. The number one thing I've
6 got to do is figure out what the debt is. Okay?
7 I've done that today. All right?

8 I'm going to give that time frame -- I'm going
9 to get that time period that's in the nature of a --
10 you-all sat in here this afternoon. You see what I
11 do. You give somebody a reinstatement period in
12 which to bring the thing current so that they're no
13 longer in default so they're no longer subject to a
14 foreclosure. Okay? That's what I would like to do.
15 I want to give Mr. Simmons that opportunity to bring
16 himself current, and then what we really need to work
17 for with these two parties is how we can get them to
18 agree and come together so that he properly gets
19 credit for the payments that he makes. Okay? I
20 would like you-all to work on that. I think you-all
21 can work together well on that, too. Okay?

22 MR. WHIPPER: Judge, we think that -- what
23 Mr. Simmons has been through it --

24 THE COURT: It may be compensable. You're
25 welcome to submit your order. All right? Very good.

1 All right, folks.

2 (The proceedings were concluded at 5:12 p.m.)

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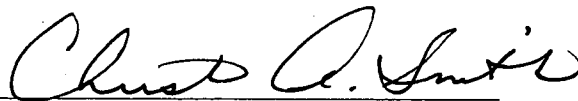
25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 21st day of July, 2016 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 

18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT W

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Common Pleas
Charleston County Judicial Center
100 Broad Street - Suite 106
Charleston, SC 29401-9401

STATE OF
SOUTH CAROLINA



Harold Simmons
1182 King Street

Charleston, SC 29403

NOTICE OF MOTION SCHEDULING

June 10, 2014

**Motion "REFMIE - Motion/Refer to Master by plaintiff, crt/mail" for Case:
2014CP1001635 - Allen Livingston VS Harold Simmons has been added to the following
Motions Roster:
115 - MOTIONS ROSTER - JUDGE NICHOLSON**

This hearing of this motion has been scheduled for 7/16/2014 at 9:30 AM.

MOTIONS ARE SCHEDULED COURTROOM 3E WITH JUDGE NICHOLSON PRESIDING. THE
DEADLINE FOR REQUESTS FOR CONTINUANCES WILL BE 5PM ON WEDNESDAY, JULY 9TH.

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:
ccleonard@charlestoncounty.org.

Mail Notice To:
Harold Simmons 1182 King Street Charleston, SC 29403

Court Info:
Common Pleas Charleston County Judicial Center 100 Broad Street - Suite 106 Charleston, SC 29401-9401

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(843)958-5000

Respectfully,

Julie Armstrong
Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ALLEN LIVINGSTON,)

PLAINTIFF,)

versus)

HAROLD SIMMONS,)

DEFENDANT.)

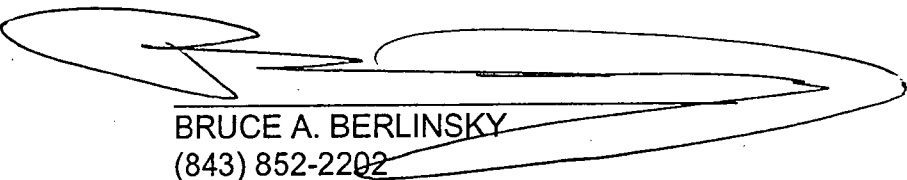
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-1635

NOTICE OF HEARING

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Charleston County Court of Common Pleas has set a motion hearing in the above captioned matter before the Presiding Judge, Honorable J. C. Nicholson, on Wednesday, July 16, 2014, at 9:30 a.m., at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina, in Courtroom 3E.

PLEASE BE PRESENT IF SO MINDED.



BRUCE A. BERLINSKY

(843) 852-2202

P.O. Box 206 (29402)

One Carriage Lane, Bldg. F

Charleston, SC 29407

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina

June 10, 2014

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

July 2, 2014

Harold Simmons
3042 N Carolina Avenue
North Charleston, SC 29405

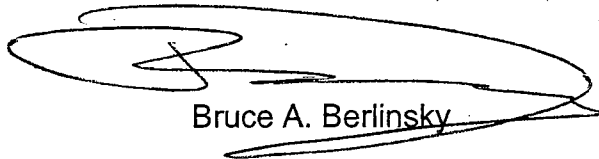
Harold Simmons
1182 King Street
Charleston, SC 29403

Re: Allen Livingston vs. Harold Simmons
Case No.: 2014-CP-10-1635

Dear Mr. Simmons:

The motion hearing scheduled for July 16, 2014, is no longer necessary at this time.

Yours Truly,



Bruce A. Berlinsky

BAB/jlr

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
ALLEN LIVINGSTON,)
PLAINTIFF,)
versus)
HAROLD SIMMONS,)
DEFENDANT.)
_____)

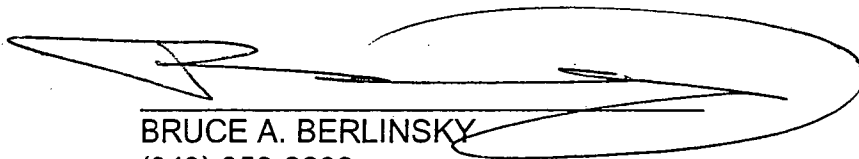
IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-01635

NOTICE OF HEARING

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE that the Charleston County Master in Equity's Office has set a hearing on Plaintiff's Motion to Strike in the above captioned matter before the Charleston County Master in Equity, Honorable Mikell R. Scarborough, on Monday, August 4, 2014, at 11:30 a.m., at the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina.

PLEASE BE PRESENT IF SO MINDED.



BRUCE A. BERLINSKY
(843) 852-2202
P.O. Box 206 (29402)
One Carriage Lane, Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
July 2, 2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....⁹.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT V

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Requests
for
Jury Trial

Exhibit U

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)
-versus-)
HAROLD SIMMONS JR.)
Defendant.)

ANSWER
(Jury Trial Requested)

BY
JULIE J. ARMSTRONG
CLERK OF COURT

2014 APR 24 PM 2:23

FILED

Defendant, Harold Simmons Jr. answer the respective numbered paragraphs of Plaintiff's Complaint dated March 10, 2014, thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

1. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not received any form of payment and has valid legal grounds for foreclosure, and therefore must deny the same demanding strict proof thereof. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
2. Defendant admit, upon information and belief, the 2nd statement of plaintiff complaint, and crave reference to said valid authentic Lease to Buy Agreement only and demanding strict proof thereof valid authenticity. (See Exhibit A: Defendant Valid Authentic Lease to Buy Agreement)
3. Defendant admit, upon information and belief, the 3rd statement of plaintiff complaint, and crave reference to said order. (See Exhibit B: Defendant Valid Authentic Court Order)

U
Court Received
Mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)
-versus-)
HAROLD SIMMONS JR.)
Defendant.)

COUNTERCLAIM
(Jury Trial Requested)

FILED
2014 JUN 12 AM 10:27
JULIE J. HARRIS-STRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of \$600,000.

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

Court Received
Mail Certified
6-4-2014

June 12 2014
Received Call from Clerk
of Court Miss Trusee stating
Defendant need to come in
and sign cover sheet.

Court Received
Mail Certified
6-4-2014

CASE: 2014-CP-10-1635

Ahhen Livingston
Plaintiff

VS

Harold Simmons
Defendant

FILED
2014 JUN 16 AM 8:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Motion to Denial
motion to Master-in-Equity

Defendant Ask Court For Denial of motion
Defendant which to Filing Counter claim at later Date.
Defendant which And Request Jury Trial.

Harold Simmons
~~Harold Simmons Jr~~
3042 North Carolina Ave
North Charleston S.C.
29405
~~Harold Simmons Jr.~~

MAY 30, 2014

give to whipper ATT 8/23/2016 U

16
7/16/2014

The state of South Carolina
county of Charleston

In the Court of Common Pleas
Cause No. 2014 CP 10 1635

Allen Livingston
Plaintiff,

-versus-

Harold Simmons Jr.
Defendant,

REQUESTS For
Continuances

FILED
CLERK OF COURT
2014 JUL 18 PM 12:24

Motion Hearing scheduled for August 4, 2014
Defendant Request For Continuances

At this Time My father was Hospitalist For leg problem which
Turn in to Heart Attack with a Stroke, Need time to gather.
I Ask Please for and Continuances at this time.
Need Time to gather Exhibits For Trial.
Need Time and at this Time Talking with An Attorney.
Did Timly Requests Jury Trial.

Harold Simmons Jr.
Harold Simmons Jr.
1182 King Street
CHAS, S.C. 29403
843-554-7414

lower Court Continu
After Appeal File

U

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

Rule 38 (B) Demand

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

Mailing Address
P. O. Box 70070
North Charleston, SC 29415

June 8, 2016

Clerk of Court for Charleston County
ATTN: Common Pleas Filing Clerk
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Allen Livingston vs. Harold Simmons, Jr.
Case No.: 2014 CP-10-1635
Jury Trial Demand
Certificate of Mailing

Dear Clerk:

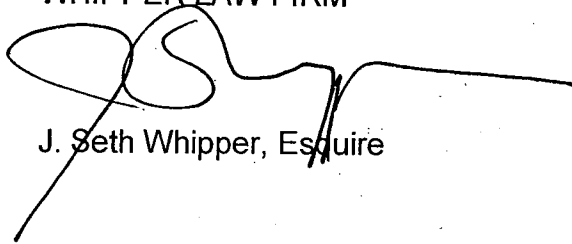
Find enclosed our demand for jury trial in the above-referenced matter, with copy.

I am also enclosing for filing the certificate of mailing related to the jury trial demand, with copy.

A self-addressed, stamped envelope for your use in returning the conformed copies is also enclosed.

Sincerely,

WHIPPER LAW FIRM


J. Seth Whipper, Esquire

Enclosures
xc: Honorable Mikell R. Scarborough
Bruce Berlinsky
Harold Simmons, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS JR.,

Defendant.

IN THE COURT OF COMMON PLEAS
THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2014-CP-10-1635

JURY TRIAL DEMNDED

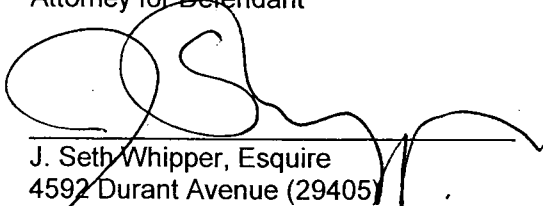
TO: PRESIDING JUDGE: CLERK: BRUCE BERLINSKY, ATTORNEY FOR
PLAINTIFF:

PURSUANT TO SCRCP 38 AND 53, Defendant demands a trial by jury of all
the issues in this matter.

FURTHER, Defendant restates this request from prior pleadings.

WHIPPER LAW FIRM
Attorney for Defendant

June 8, 2016


J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina 29415
843/ 740-7777
843/ 740-9108 FAX

Cheryl Whipper Hamilton

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT U

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit T

Court Received
Mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
Defendant.)

COUNTERCLAIM
(Jury Trial Requested)

FILED
2014 JUN 12 AM 10:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant, Harold Simmons Jr. states he has a claim against the plaintiff in the amount of \$600,000.

The counterclaim arose out of the same transaction or occurrence as the plaintiff's claim as a result of the following events:

FACTUAL AND PROCEDURAL BACKGROUND

This instant motion arises from a foreclosure case. The Defendant, Harold Simmons Jr. came into a Lease to Buy Agreement with Plaintiff for property located at 3042 N. Carolina Ave, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "A" and incorporated by reference. The Plaintiff, Allen Livingston has consistently filed and pursued the defendant on several frivolous claims, not showing good faith, no legitimate justification for any actions, constant violation of the statute of frauds, slander, and for no other purpose but to embarrass, delay, or burden the Defendant. The actions filed by the Plaintiff are malicious and have indicated that the actions are being brought merely as a means of harassment.

June 12 2014

Received Call From Clerk
of Court Miss Trusee Statins
Defendant Need to come in
And sign cover sheet.

Court Received
Mail Certified
6-4-2014

- T
1. Between 2007 until the present the Plaintiff has filed various claims and numerous exhibits. A motion was restored on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court heard the testimony and argument where there was a major issue regarding credibility of the parties and conflicting recollections of the litigants and the witnesses. The Plaintiff allegations against the Defendant of non-rental payments and some opinion regarding the building and its depreciation. The Defendant categorically denied all allegations. The Court ruled in favor of the Defendant which is as evidenced by a copy of said Agreement attached hereto as Exhibit "B" and incorporated by reference.
 2. The Court decision confirms that validity of this counterclaim. It was ruled and order that the Plaintiff credibility remains a big issue in the case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. The Court was troubled with the Plaintiff's version of facts. His original allegations regarding non-payment was revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate. It is a crucial factor in looking at version of the contract is how the front page of the Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for the Defendants period to make payments being left completely out of the version put forward by the Plaintiff. This to the Court that there is a proper place for equity in its considerations. The Defendant was granted all relief under the theory of unjust enrichment and that is also proper in an equitable action. It was ordered the most appropriate relief is specific performance. The Defendant was to assume all purchaser responsibilities and all the

+

credit adjustments were made leaving a balance of \$37,460.00 to be paid on the installment contract at the rate of \$500 month until balance is paid in full.

3. The Plaintiff continued further to file yet another claim of foreclosure. Which is why this counter claim is being filed. In short, Plaintiffs claims were so utterly baseless and lacking in any evidentiary support that no reasonable lawyer, judge, or jury could conceivably think his claims had any merit whatsoever. The Defendant has suffered from severe emotional distress and severe depression as a direct result of the Plaintiffs meritless civil actions. Plaintiff is known for filing meritless civil claims.

4. Sanctions are appropriate pursuant to the current § 15-36-10 which allows the court to impose sanctions for the initiation and prosecution of meritless civil actions.

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

FAILURE TO CONSTITUTE A CAUSE OF ACTION

1. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCp.

STATUTE OF FRAUDS

2. The Plaintiff's claims are all barred by the Statute of Frauds.

GOOD FAITH AND REASONABLE BELIEF

3. The actions and conduct of defendant, were undertaken in the good-faith performance of business duties, based upon reasonable cause, pursuant to just cause, not contrary to any law or regulation as made and provided, and proper under the circumstances. Plaintiff failed to show good faith and reasonable belief.

ADDITIONAL CLAIMS

4. Defendant hereby give notice that he intend to rely upon affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend your answer/counterclaim to assert any such defenses and claims.

NEGLIGENT ACT OF OTHERS

5. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the defendant has no control, barring plaintiff's claims against the defendant.

PAYMENT

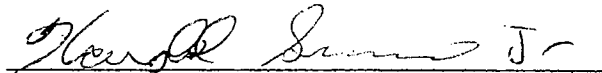
6. The Defendant asserts the affirmative defense of payment.

The defendant states that the information contained in the counterclaim is true and correct to the best of his knowledge. Defendant understands that should he be successful in this action and obtain judgment, and if plaintiff does not appeal within thirty days, this judgment becomes final. The defendant cannot commence another action involving the same parties and issues.

I state under penalty of perjury that the above is correct and truthful.

Submitted this 2nd day of June, 2014.

Respectfully submitted,



Harold Simmons Jr.; Pro Se
1182 King Street
Charleston, South Carolina 29403
(843) 554- 7414

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 2nd day of June, 2014
HAROLD SIMMONS JR.

T.

BY: Karel J. J.

THE STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)

Plaintiff,)

-versus-)

HAROLD SIMMONS JR.)

Defendant.)

CERTIFICATE OF SERVICE

FILED
2014 JUN 12 AM 10:25
JULIE ARMSTRONG
CLERK OF COURT
BY

I certify that on this date, I served a copy of Defendant's Answer to Plaintiff's Complaint in this action, dated 2nd day of June, 2014 by mailing it to him, at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Allen Livingston
6046 Hyde Park Road
Ravenel, South Carolina 29470
PLAINTIFF

and/or

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, South Carolina 29407
ATTORNEY FOR PLAINTIFF

June 2 2014
Date

Harold Simmons Jr.
Signature

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
Defendant.)

EXHIBIT A 2
(Valid Authentic Lease To Buy Agreement)
Forgery, Fake, Altered

Forgery, Fake, Altered

T Exhibit C

Lease to Buy:

This lease, mortgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr.

Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons Jr.
buyer
property located at 3049 N CAROLINA AVE. At a purchase price, rate
location/address
of \$ one hundred & twenty
price written Five thousand. \$(125,000.00) Dollars.
price in numbers

The monthly Payment is payable in advance and shall be due on or before the

the fifteenth - 15, Day of each month.
written number

If for some reason Harold Simmons Jr. fails to meet the monthly payment
name of buyer
ALLEN LIVINGSTON agree to give Harold Simmons Jr. 30 day
name of seller name of buyer number

Twenty days to pay any Delinquent payments before he or she is
write number
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller

Harold Simmons Jr. have the right, option to purchase, buy the property,
buyer
located at N CAROLINA AVE. If this agreement is not terminated
address

by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.

Mr
Barnwell
Mr
LIVINGSTON

T C

Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give 30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 4 15 2000 Ending: 5 31 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord
Harold Simmons in writing 1 days in advance prior to entering the
leasee number
build during reasonable hours without being liable for trespassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 15 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year \$ 500.00. Beginning
buyer

6 - 15 - 2000. Ending 6 - 15 - 2001
month day year month day year

Second year \$. Beginning - - - Ending
month day year

- - -
month day year

Purchase Price to Buy \$ 125,000.00.

Monthly Payment: \$ 501.00

ALLEN LIVINGSTON
(seller's print)

Allen Livingston
(seller's signature)

Harold Simmons Jr.
(buyer's print)
Renton

Harold Simmons Jr.
(buyer's signature)
Renton

(witness)

(witness)

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)
-versus-)
HAROLD SIMMONS JR.)
Defendant.)
_____)

EXHIBIT A I
(Valid Authentic Lease To Buy Agreement)

411

Lease to Buy:

This lease, mortgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year

and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr

Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons Jr
buyer

property located at 3042 N. CAROLINA AVE. At a purchase price, rate
NORTH CHARLESTON S.C. 29405
location/address

of \$ one Hundred + Twenty / Five Thousand \$(125,000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the

Fifteen - - 15 - Day of each month.
written number

If for some reason Harold Simmons Jr fails to meet the monthly payment
name of buyer

ALLEN LIVINGSTON agree to give Harold Simmons Jr 30 day
name of seller name of buyer number

Thirty days to pay any Delinquent payments before he or she is
write number

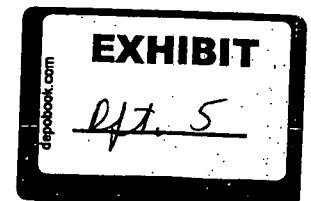
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller

Harold Simmons Jr have the right, option to purchase, buy the property,
buyer

located at 3042 N. CAROLINA AVE. If this agreement is not terminated
NORTH CHARLESTON 29405
address

by either party during the term's set forth Harold Simmons Jr have the
buyer
right and option to purchase, buy the end of these terms.



5. (2)

Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give 30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - - 31 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
leasee number
build during reasonable hours without being liable for trespassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year \$ 500.00. Beginning
buyer

T A

3(3)

6 - 15 - 2000. Ending 6 - 15 - 2001.
month day year month day year

Second year \$ 500.00. Beginning 6 - 15 - 2001. Ending
month day year

4 - 15 - 2021
month day year

Purchase Price to Buy \$ 125,000.00.

Monthly Payment: \$ 501.03.

ALLEN LIVINGSTON
(~~Allen~~'s print)

Allen Livingston
(~~Allen~~'s signature)

Harold Symmons Jr.
(~~Harold~~'s print)
Renton

Harold Symmons Jr.
(~~Harold~~'s signature)
Renton

John W. [unclear]
(witness)

(witness)

THE STATE OF SOUTH CAROLINA)
:
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
:
Plaintiff,)
:
-versus-)
:
HAROLD SIMMONS JR.)
:
Defendant.)
:
_____)

EXHIBIT B
(Valid Authentic Court Order)

Exhibit K

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-8027

Allen Livingston
PLAINTIFF(S)

Harold Simmons
DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

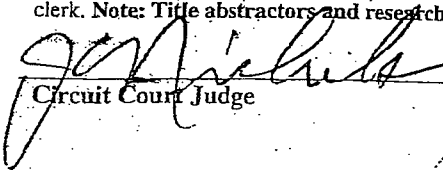
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$ -
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2117

Judge Code

2/20/13
Date

Exhibit K

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-8027

PROPOSED ORDER

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid." . . . Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the

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contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contract. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid \$500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled \$87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid \$16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel and instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

7CM
The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1, 315 S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement: a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and \$500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availability of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

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K

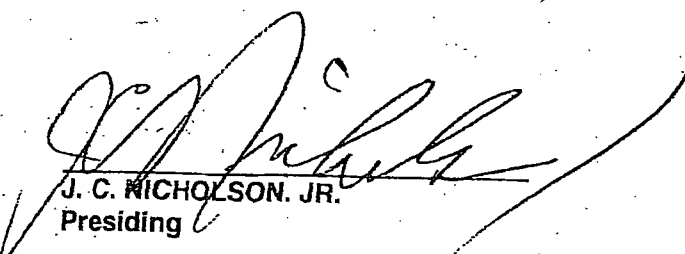
Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for \$87, 540.00 towards the purchase price of \$125,000 with a balance of \$37,460.00 to be paid on the installment contract at the rate of \$500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notation of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.


J. C. NICHOLSON, JR.
Presiding

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
Defendant.)

EXHIBIT C
(Valid Authentic of Payments)

Any and all said such receipt of payments that have not been allotted for in any such court proceeding known unto this day are listed below and should be taken into account as a valid authentic receipt of payment are as follows:

COURT ORDERED CREDIT: \$87,540.00 (See Exhibit B)

COURT ORDRED BALANCE: \$37,460.00 (See Exhibit B)

DEFENDANT ORIGINAL VALID AUTHENTIC RECEIPT OF PAYMENTS (Not accounted for in any other court proceeding but due proper credit): \$8,400.00 (See Exhibit C pg.2)

DEFENDANT CHRONOLOGICAL LIST OF ORIGINAL VALID AUTHENTIC RECEIPTS

- 1) 09/15/2009 \$500
- 2) 12/15/2009 \$500
- 3) 01/15/2010 \$500
- 4) 02/15/2010 \$500
- 5) 06/15/2010 \$500
- 6) 07/15/2010 \$500
- 7) No date \$500
- 8) No date \$400
- 9) 09/10/2012 \$500
- 10) 09/10/2012 \$500
- 11) 09/10/2012 \$500
- 12) 10/22/2012 \$500
- 13) 10/22/2012 \$500
- 14) 10/22/2012 \$500
- 15) 05/04/2013 \$500
- 16) 05/04/2013 \$500
- 17) 05/04/2013 \$500
- 18) Total \$8400

19) Difference: \$37460 - \$8400 = \$29060

February 20, 2013 Court Order Find Total Paid \$87,540 on beginning payment of June 15, 2000 at \$500 a month.

Month	Year	End Year Payment
June	2000	\$3,500.00
January	2001	6,000.00
January	2002	6,000.00
January	2003	6,000.00
January	2004	6,000.00
January	2005	6,000.00
January	2006	6,000.00
January	2007	6,000.00
January	2008	6,000.00
January	2009	6,000.00
January	2010	6,000.00
10 1/2 Years		63,500.00
January	2011	6,000.00
January	2012	6,000.00
January	2013	6,000.00
January	2014	6,000.00
4 Years		24,000.00

$$\$63,500.00 + 24,000.00 = \$87,500.00$$

Not Accounted for Money Orders before and after Court Order \$4,500.00

$$\$87,500.00 + 4,500.00 = \$92,040.00$$

January 15, 2015 to September 15, 2015 \$4,500.00

Not Accounted for Cash Receipts before Court Order \$3,900.00

$$\$92,040.00 + 3,900.00 = \$95,940.00$$

October 15, 2015 to May 15, 2016 \$3,900.00



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SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

**NOT
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Pay to

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KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number

20206481714

Year, Month, Day

2014
2012-09-10

Post Office

294051

Amount

\$500.00

Clerk

0012



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INFORMATION

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Serial Number

20206481703

Year, Month, Day

2014
2012-09-10

Post Office

294051

Amount

\$500.00

Clerk

0012



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INFORMATION

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NEGOTIABLE**

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YOUR RECORDS

Serial Number

20206481692

Year, Month, Day

2014
2012-09-10

Post Office

294051

Amount

\$500.00

Clerk

0012

T

RECEIPT		DATE <u>9/11/12</u>	No. <u>887401</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		<u>\$500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT ☐ FOR <u>20206481714</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT			
BAL. DUE			

RECEIPT		DATE <u>9/11/12</u>	No. <u>887402</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		<u>\$500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT ☐ FOR <u>20206481703</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT			
BAL. DUE			

RECEIPT		DATE <u>9/11/12</u>	No. <u>887403</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		<u>\$500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT ☐ FOR <u>20206481692</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT			
BAL. DUE			

T

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address _____				
Serial Number 20216408534		Year, Month, Day <u>2014</u> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address _____				
Serial Number 20216408545		Year, Month, Day <u>2014</u> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address _____				
Serial Number 20216408556		Year, Month, Day <u>2014</u> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010

T

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887414</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☒ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408534</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887415</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408545</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887416</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408556</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			



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Serial Number
21080419470

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012



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Serial Number
21080419457

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012



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INFORMATION

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Serial Number
21080419468

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419470				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	mortgage payment				
	check (Jeffry)				
	Allen Livingston & Barnwell				
SIGNED	Law	Roxane Kirby		1154	
			☐	TELEPHONED	
			☐	RETURNED YOUR CALL	
			☐	PLEASE CALL	
			☐	WILL CALL AGAIN	
			☐	CAME TO SEE YOU	
			☐	WANTS TO SEE YOU	

BARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419457				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check)				
	mortgage payment				
	Allen Livingston &				
	Barnwell Law Firm				
	(Jeffry Barnwell)				
SIGNED	Roxane Kirby			1154	
			☐	TELEPHONED	
			☐	RETURNED YOUR CALL	
			☐	PLEASE CALL	
			☐	WILL CALL AGAIN	
			☐	CAME TO SEE YOU	
			☐	WANTS TO SEE YOU	

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419468				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check)				
	Mortgage Payment				
	Allen Livingston &				
	Barnwell Law Firm				
	(Jeffry Barnwell)				
SIGNED	Roxane Kirby			1154	
			☐	TELEPHONED	
			☐	RETURNED YOUR CALL	
			☐	PLEASE CALL	
			☐	WILL CALL AGAIN	
			☐	CAME TO SEE YOU	
			☐	WANTS TO SEE YOU	

No. _____

1-15-2010

Received from Harold Simmons Jr.Five Hundred 00

Dollars

Amt of Account	68,860.00
Amt Paid	500.00
	CASH
Balance Due	68,360.00

Mortgage for 469-16-00-329

\$ 500.00

No. _____

9-15-2009

Received from Harold Simmons Jr.Five Hundred Dollars 00

Dollars

Amt of Account	70,860.00
CASH Amt Paid	500.00
Balance Due	70,360.00

Mortgage for 469-16-00-329

\$ 500.00

No. _____

12-15-2009

Received from Harold Simmons Jr.Five Hundred 00

Dollars

Amt of Account	69,360.00
Amt Paid	500.00
	CASH
Balance Due	68,860.00

Mortgage for 469-16-00-329

\$ 500.00

No. _____

2-15-2010

Received from Harold Simmons JrFive Hundred ⁰⁰/₁₀₀

Dollars

Amt of Account	68,360.00
Amt Paid	500.00
	CASH
Balance Due	67,860.00

Mortgage 469-16-329

\$ 500.00

No. _____

6-15-2010

Received from Harold Simmons Jr

Dollars

Amt of Account	66,360.00
Amt Paid	500.00
	CASH
Balance Due	65,860.00

Mortgage 469-16-00-329

\$ 500.00

No. _____

7-15-2010

Received from Harold Simmons JrFive Hundred ⁰⁰/₁₀₀

Dollars

Amt of Account	65,860.00
Amt Paid	500.00
	CASH
Balance Due	65,360.00

For Mortgage 469-16-00-329

\$ 500.00

RECEIPT

DATE _____ No. 127610

RECEIVED FROM Harold Simmons Jr. \$ 500.00

Five Hundred 00 _____ DOLLARS

☐ FOR RENT
☐ FOR M.

ACCOUNT	500	00
PAYMENT	500	00
BAL. DUE	000	00

☒ CASH
☐ CHECK
☐ MONEY ORDER

FROM _____ TO _____

BY [Signature]

adams 2701

RECEIPT

DATE _____ No. 127628

RECEIVED FROM Harold Simmons Jr. \$ 100.00

_____ DOLLARS

☐ FOR RENT
☐ FOR _____

ACCOUNT		
PAYMENT		
BAL. DUE		

☒ CASH
☐ CHECK
☐ MONEY ORDER

FROM _____ TO _____

BY [Signature]

adams 2701

STATE OF SOUTH CAROLINA

COUNTY OF _____

Allen Livingston

Plaintiff,

vs.

Harold Simmons Jr.

Defendant.

IN THE COURT OF COMMON PLEAS

_____ JUDICIAL CIRCUIT

CASE NO.: 2014CP-10-1635

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Harold Simmons, Bar No. Pro Se

Address: 1182 King Street Chas
S.C. 29403

Phone: _____ Fax 843-554-7414

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: ☒ Motion for Denial

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Harold Simmons Jr.
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

6-16-2014
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____

☒ Other: forma pauperis

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

1

CASE: 2014-CP-10-1635

Akhen Livingston Plaintiff

VS

Harold Simmons Defendant

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 JUN 16 AM 8:46

FILED

Motion to Denial
Motion to Master-in-Equity

Defendant Ask Court For Denial of Motion
Defendant which to Filing Counter claim at later Date.
Defendant which And Request Jury Trial.

Harold Simmons
Harold Simmons Jr
3042 North Carolina Ave
North Charleston S.C.
29405
Harold Simmons Jr.

May 30, 2014

Court Received
Mail Certified
6-4-2014

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-1635

ALLEN LIVINGSTON,
Plaintiff,
versus
HAROLD SIMMONS,
Defendant.

CERTIFICATE OF MAILING

FILED
2014 JUN 16 AM 8:46
JULIE J. ARMSTRONG
CLERK OF COURT

I Harold Simmons Jr do Hereby certify That
I have this Date mailed A True and correct copy
of the Foregoing motion to Denied prepaid
and deposited with the United State Postal

Bruce A Berlinsky
one Carriage Lane, Bldg F
Charleston, S.C. 29407
(843) 852-2202

Date MAY 30, 2014

Harold Simmons Jr
3042 North Carolina Ave
North Charleston S.C.
29405
843 554-7414

En Closed

Motion to Denial
certificate of service

Motion to Proceed in FORMA PAUPERIS

Motion to Counter Claim
certificate of service

Handwritten signature

Court Received
mail Certified
6-4-2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT T

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit S

04/03/2014



SERVICE/AFFIDAVIT OF SERVICE

03/11/2014



SUMMONS & COMPLAINT

03/11/2014



LIS PENDENS FILED

EVENTS



PARTIES



ASSOCIATED CASES



S

07/31/2014	
AMENDED/AMENDED NOTICE OF HEARING & CERT/MAIL	
07/18/2014	
REQUEST FOR CONTINAUNCE	
07/07/2014	
NOTICE/NOTICE OF HEARING & CERT/MAIL	
06/26/2014	
MOTION/STRIKE BY PLAINTIFF, CRT/MAIL	
06/16/2014	
MOTION TO DENIAL TO MOT TO MASTER IN EQUITY & CERT/MAIL	
06/12/2014	
ORDER/GRANTED TO PROCEED IN FORMA PAUPERIS W/OUT PAYMENT	
06/12/2014	
C/CLAIM & CERT/SERV	
06/12/2014	
NOTICE/NOTICE OF HEARING & CERT/MAIL	
06/04/2014	
MOTION & AFFIDAVIT TO PROCEED IN FORMA PAUPERIS	
06/04/2014	
ORDER OF DEFAULT & REFERRED TO MASTER	
05/22/2014	
MOTION/REFER TO MASTER BY PLAINTIFF, CRT/MAIL	
04/29/2014	
AFFIDAVIT/DEFAULT	
04/29/2014	
AFFIDAVIT OF NON-MILITARY SERVICE	
04/24/2014	
ANSWER TO COMPLAINT, JURY TRIAL REQUESTED & CRT/SRV	

S

11/03/2015	
AMORTIZATION SCHEDULE	
07/31/2015	
NOTICE/RESCHEDULED NOTICE OF HEARING & CRT/MAIL	
07/10/2015	
NOTICE/NOTICE OF HEARING & CRT/MAIL	
05/29/2015	
MOTION/ALTER OR AMEND ORDER BY DEFENDANT, CRT/MAIL	
04/08/2015	
MASTER/MASTER'S FINAL ORDER	
12/03/2014	
AMENDED NOTICE OF HEARING & CRT/MAIL	
12/02/2014	
NOTICE OF APPEARANCE OF ATTY J SETH WHIPPER	
12/01/2014	
NOTICE/NOTICE OF HEARING & CRT/MAIL	
10/30/2014	
MOTION/CONTINUANCE BY DEFENDANT	
09/04/2014	
NOTICE/NOTICE OF FINAL HEARING & CRT/MAIL	
08/12/2014	
MASTER ORDER-PLNTFF'S OT TO STRIKE IS GRANTED ETC	
08/12/2014	
MASTER/MASTER'S SCHEDULING ORDER	
08/12/2014	
MASTER/MASTER'S ORDER FOR TERM OF CRT	
08/04/2014	
MOTION FOR EXTENSION BY DEFNT	

S

JURY TRIAL DEMANDED, CRT/MAIL	
06/06/2016	
MOTION/ALTER OR AMEND BY DEFENDANT, CRT/MAIL	
05/23/2016	
SERVICE/CERTIFICATE OF MAILING	
05/23/2016	
AFFIDAVIT IN SUPPORT OF ATTORNEY FEES	
05/23/2016	
AFFIDAVIT/AFFIDAVIT	
05/19/2016	
SERVICE/CERTIFICATE OF MAILING	
05/18/2016	
MASTER'S ORDER OF FORECLOSURE & SALE	
04/27/2016	
ORDER-DEFNT'S MOT TO ALTER OR AMEND IS DENIED	
03/10/2016	
NOTICE/NOTICE OF RESCHEDULED HEARING & CRT/MAIL	
02/03/2016	
NOTICE/NOTICE OF HEARING & CRT/MAIL	
01/28/2016	
MISCELLANEOUS DOCUMENTS (LETTER BY J SETH WHIPPER)	
01/28/2016	
MASTER ORDER-SUMMONS & RULE TO SHOW CAUSE	
01/28/2016	
AFFIDAVIT IN SUPPORT OF RULE TO SHOW CAUSE	
01/08/2016	
SERVICE/CERTIFICATE OF MAILING	
12/31/2015	
SERVICE/CERTIFICATE OF MAILING	

S

Charleston County Clerk Of Court

[\[Log In \]](#)

Home	Search	Court Info	GS Docketing
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2014CP1001635**ALLEN LIVINGSTON****VS****HAROLD SIMMONS****FORECLOSURE 420****File Date: 03/11/2014****Case Status: ENDED****Disp Date: 04/08/2015****FILINGS****07/23/2018**

AFFIDAVIT/PUBLICATION

07/23/2018

CERTIFICATE OF MAILING

05/11/2018LETTER FROM ATTY BERLINSKY IN
RE: BANKRUPTCY COURT**09/06/2016**

AFFIDAVIT/PUBLICATION

09/01/2016MASTER'S ORDER ON MOTION TO
ALTER & AMEND**08/30/2016**MOTION/TO POST COLLATERAL
WITH CLERK BY DEFENDANT,
CRT/SRV**08/09/2016**NOTICE OF APPEARANCE OF ATTY
WHIPPER FOR HAROLD SIMMONS
JR**07/28/2016**

MISCELLANEOUS DOCUMENTS

06/10/2016

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT S

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-1635

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

**ORDER OF DEFAULT
AND REFERENCE**

FILED
2014 JUN -4 AM 11:11
JULIE J. ARMSTRONG
CLERK OF COURT

UPON CONSIDERATION of the Affidavit of Bruce A. Berlinsky, dated April 28, 2014, find that the Defendant, Harold Simmons, was personally served as evidenced by the Affidavit of Service filed with this Court; that more than thirty (30) days have elapsed since the acceptance of the Civil Action Coversheet, Lis Pendens, Summons and Complaint, pursuant to the Affidavit of Bruce A. Berlinsky, and that no Answer, Notice of Appearance, or Demurrer has been filed pursuant to the said Civil Action Coversheet, Lis Pendens, Summons and Complaint by Defendant, Harold Simmons.

IT FURTHER APPEARS that this is an action to foreclose upon a piece of property lying and being in Charleston County, South Carolina.

NOW, THEREFORE, it is

ORDERED, that the Defendant, Harold Simmons, be and is hereby declared to be in default; and, it is further

ORDERED, that the within action be referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, for the purpose of taking testimony and making findings of facts and conclusions of law, and to render a final decree directly appealable to the Supreme Court of South Carolina.

Charleston, South Carolina

2014.

[Signature]
PRESIDING JUDGE, Charleston County

RECEIVED
MAY 20 2014
BY: SPM

Date

Amount

PAID 4-30-2014
\$125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY

By:

[Signature]

FILED

2018 AUG -1 PM 3:47

JULIE T. ARMSTRONG
CLERK OF COURT

CASE: 2014-CP-100-1 July 31, 2018

CASE: 2014-CP-100-1635

Exhibit A

Honorable Judge Dennis

CRACK In April 2014 I WAS service with And Complaint And had 30 days to Answer which I did with in 28 days doing this Time I had And Hearing Before Master + Equity Before Judge Scarborough At this Time I had Filed For a Jury Trial 4 to 5 Times And had Been Ignored, Never Know Why? Case NO. 2014-CP-10-1635 This Case went on For about 2 years or more.

On Aug 11, 2016 I had my Lawyer make Another Jury Trial Demand, Thase is when I Found out I was Find in Default, By Judge Dennis it was said Mr Simmons Have NO Right to a Jury Trial, this Reason Mr Simmons should Be Denial. My Lawyer Seth Whipper stated: to Judge Scarborough Mr Simmons Been Requesting Jury Trial, Judge Scarborough stated these day was the first Time He Heard Anything About a Jury Trial. And Attorney Bruce Berlinsky stated Judge Dennis Find Mr Simmons in default. I didnt know what Attorney Berlinsky was Telling you Judge Dennis on that day you sign that order But this have had A very Serious in pack on my case this make it Impossible to get A fair Trial, I had Requested Jury Trial on Apr 24, 2014, June 12, 2014 June 16 2014, July 18 2014 And June 8 2016. At this Time this case in under Appeal But Every throw it under Appeal my Right to a Jury Trial was and still Violated, Attorney Bruce Berlinsky stated: we all was present At the Default Hearing I do not Remember A Hearing are was service to take place in one I need this to be corrected, This is a Violation of my Right the Seventh Amendment, Bill of Right Jury Trial, I don't know if this a Mistake on the staff are Attorney Bruce Berlinsky lie to you about the Filing of my answer. By my Calendar I was service in April and Answer in April. Because of thas I was Denial All my Right to A fair Trail And Because of thase My property is Beins sold on Aug 7 2018 In Jury I have Been Fn Jury. This Case is built Base on lies But ANYWAY I ASKING you the Court Before any more damages is created For a stay motion order A Judge Scarborough order of foreclosure and Sale that taking place on Aug 7, 2018 I ASK SO Justice can be found

Though the Appeal Court. (Pleasant) as I look at the paper
work I have I was never service with any order to appear
Before you, even when I check with the Clerk of Court it show
I was never service. SO I'm ask in the NAME of Justice, Fairness
and the LAW. (Please)

THANK you
Harold Simmons Jr.
Harold Simmons Jr.
CASE: 2014-CP-10-01635



State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

R. Markley Dennis, Jr.
Judge

Post Office Box 1800
300 B. California Avenue
Moncks Corner, SC 29461-1800
Phone: (843) 719-4435
Fax: (843) 719-4599
mdennisj@sccourts.org

September 4, 2018

Harold Simmons, Jr.
3042 North Carolina Ave.
North Charleston, SC 29405

Dear Mr. Simmons,

Judge Dennis is in receipt of your most recent correspondence. I must respectfully advise you that our office is not able to render any assistance to you. As a Circuit Court Judge, Judge Dennis and members of his office are ethically prohibited from practicing law or providing you any type of legal advice. I must also ask that you not communicate with our office relative to your situation, as it constitutes an ex-parte communication, which is also prohibited under our Rules. Any questions regarding your case or any other matters should be addressed to an attorney.

Cordially,

Nicholas B. Uricchio

Law Clerk to the Honorable R. Markley Dennis, Jr.

9/25/2018
Call Judge Dennis office 2:00 p.m.
L.M. (Adult Court Reporter)

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT R

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA)
 :
 COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
 Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
 :
 Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
 :
 Defendant.)

ANSWER
 (Jury Trial Requested)

BY
 JULIE J. ARMSTRONG
 CLERK OF COURT

2014 APR 24 PM 2:23

FILED

Defendant, Harold Simmons Jr. answer the respective numbered paragraphs of the Plaintiff's Complaint dated March 10, 2014, thus:

FIRST DEFENSE: QUALIFIED GENERAL DENIAL

1. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not received any form of payment and has valid legal grounds for foreclosure, and therefore must deny the same demanding strict proof thereof. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
2. Defendant admit, upon information and belief, the 2nd statement of plaintiff complaint, and crave reference to said valid authentic Lease to Buy Agreement only and demanding strict proof thereof valid authenticity. (See Exhibit A: Defendant Valid Authentic Lease to Buy Agreement)
3. Defendant admit, upon information and belief, the 3rd statement of plaintiff complaint, and crave reference to said order. (See Exhibit B: Defendant Valid Authentic Court Order)

- Q
4. Defendant deny the allegations of the 4th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
 5. Defendant lack sufficient information regarding the reason(s) plaintiff has or has not given a notice of the (alleged) default and right to cure. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
 6. Defendant deny the allegations of the 5th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
 7. Defendant deny, the allegation of the 6th statement of plaintiff complaint. (See Exhibit C: Defendant Valid Authentic Receipt of Payments)
 8. Defendant deny all statements and allegations of the Complaint not herein above specifically admitted, modified, or denied.

SECOND DEFENSE: FAILURE TO CONSTITUTE A CAUSE OF ACTION

9. That the Complaint fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), SCRCP.

THIRD DEFENSE: GOOD FAITH AND REASONABLE BELIEF

10. The actions and conduct of defendant, were undertaken in the good-faith performance of business duties, based upon reasonable cause, pursuant to just cause, not contrary to any law or regulation as made and provided, and proper under the circumstances.

FOURTH DEFENSE: ADDITIONAL DEFENSE AND CLAIMS

Q

11. Defendant hereby give notice that he intend to rely upon affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend your answer to assert any such defenses and claims.

FIFTH DEFENSE: NEGLIGENT ACT OF OTHERS

12. Plaintiff's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom the defendant has no control, barring plaintiff's claims against the defendant.

WHEREFORE, having fully answered the plaintiff Complaint, defendant pray that this matter be dismissed and that he recover all costs from the plaintiff.

Submitted this 23th day of April, 2014.

Respectfully submitted,



Harold Simmons Jr.; Pro Se
1182 King Street
Charleston, South Carolina 29403
(843) 554- 7414

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 23 day of April, 2014

HAROLD SIMMONS JR.

BY: 

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
Defendant.)

CERTIFICATE OF SERVICE

FILED
2014 APR 24 PM 2:23
JULIE J. ARMSTRONG
CLERK OF COURT

I certify that on this date, I served a copy of Defendant's Answer to Plaintiff's Complaint in this action, dated 23 day of April, 2014 by mailing it to him, at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Allen Livingston
6046 Hyde Park Road
Ravenel, South Carolina 29470
PLAINTIFF

and/or

Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, South Carolina 29407
ATTORNEY FOR PLAINTIFF

Apr. 23 2014
Date

Harold Simmons Jr.
Signature

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)

-versus-

HAROLD SIMMONS JR.)
Defendant.)

EXHIBIT A
(Valid Authentic Lease To Buy Agreement)

Lease to Buy:

This lease, mortgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr

Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons Jr agree to lease with option to buy said

property located at 3042 N. CAROLINA AVE. At a purchase price, rate
NORTH CHARLESTON S.C. 29405
location/address
of \$ one Hundred + Twenty (\$ 125,000.00) Dollars.
Five Thousand price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the

Fifteen - - 15 - Day of each month.
written number

If for some reason Harold Simmons Jr fails to meet the monthly payment
name of buyer

ALLEN LIVINGSTON agree to give Harold Simmons Jr 30 day
name of seller name of buyer number

Thirty days to pay any Delinquent payments before he or she is
write number

found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller

Harold Simmons Jr have the right, option to purchase, buy the property,
buyer

located at 3042 N. CAROLINA AVE. If this agreement is not terminated
NORTH CHARLESTON 29405
address

by either party during the term's set forth Harold Simmons Jr have the
buyer
right and option to purchase, buy the end of these terms.

26. (2)

Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, ONE
print # write number

For some reason Harold Simmons becomes unable to honor lease
agreement, ill, lost wages, business foreclosure, Harold Simmons have
the right to brake lease agreement Harold Simmons Jr. have to give
30 days notice.

1 years after entering this agreement Harold Simmons have
the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - 31 - 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these
contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
leasee number
build during reasonable hours without being liable for tresspassing, for the
purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year \$ 500.00 - Beginning
buyer

P.543

6 - 15 - 2000 Ending 6 - 15 - 2001
month day year month day year

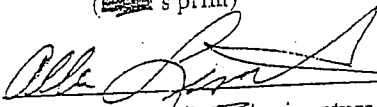
Second year \$ 500.00 Beginning 6 - 15 - 2001 Ending
month day year month day year

4 - 15 - 2001
month day year

Purchase Price to Buy \$ 125,000.00

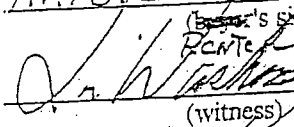
Monthly Payment: \$ 506.00

ALLEN LIVINGSTON
(~~Allen~~'s print)


(~~Allen~~'s signature)

Harold Symmons Jr
(~~Harold~~'s print)
Renter

HAROLD SYMONS JR
(~~Harold~~'s signature)
Renter


(witness)

(witness)

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Cause No. 2014 CP 10 1635

ALLEN LIVINGSTON)
Plaintiff,)
-versus-)
HAROLD SIMMONS JR.)
Defendant.)
_____)

EXHIBIT B
(Valid Authentic Court Order)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-8027

PROPOSED ORDER

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THE WITHIN MATTER came before this Court after restoration to the trial docket on a Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has received numerous exhibits. This case presented major issues regarding the credibility of the parties and the conflicting recollections of the litigants and the witnesses.

Plaintiff appeared represented by counsel and presented witnesses (2) to support the waste allegations in his claim. Defendant appeared represented by counsel, calling one witness in support of his counterclaim and defense.

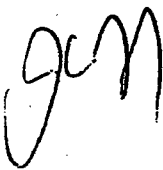
This case centers on the issue of whether the Defendant has substantially performed his agreement under the contract negotiated by the parties on June 15, 2000. This matter began as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent when due and demanded for the period beginning 2005 through October 2007. Defendant denied fault and counterclaimed for damages and specific performance on the bases that the agreement executed by the parties was an installment land contract.

To determine the nature of their relationship, this Court considered documents submitted by each party that were alleged to set out the terms of their agreement. After careful consideration of those documents, which were two versions of the contract signed by the parties, this Court determined that the document offered by Mr. Simmons was the original agreement and the best evidence of their expectations since it contained original signatures from both parties and the original signatures of a witness. Real property is often sold under contracts that provide for the payment of the purchases in a series of installments. "These contracts, usually termed installment land contracts, are drafted in many ways. Typically, the vendor retains legal title to the property until all of the purchase price has been paid." . . . Lewis v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contract law provides that when a contract is clear and unambiguous, the language alone determines the

contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

The Defendant contends that, in fact, he has paid against the principle in advance by making payments at a higher and faster rate than required under the contract. Mr. Simmons' primary proof for his position is the example where Plaintiff alleges a default in payments during the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid \$500.00 beyond what was required for the period alleged. Mr. Simmons testified that during the length of the contract he would pay at a higher or faster rate in order to protect himself from defaulting on the payments. Defendant tendered his entire collection of receipts for the contested period of payment. This record of payment totaled \$87,540.00. A comparison of the chronological pay period utilizing the contract rate against Defendant's record of payment reveals that Mr. Simmons at the time of trial had paid \$16,040.00 beyond what was required under the contract. Our Court of Appeals has specifically held that in an installment land contract, the vendee in possession of the land is considered the owner of an equitable interest in the property. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See also, Lewis v. Premium Investment Corporation, supra, footnote 4.

Actions to foreclose or cancel an instrument are actions in equity. Wilder Corporation v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v. Premium Investment Corporation, supra.

 The theory of equitable conversion provides that under an executory contract for the sale of real estate, the equitable estate passes to the purchaser and the bare legal title for security purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal Property Regime 1, 315 S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive, fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel objected to the treatment of the list of conditions on page four of the contract as applicable to the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of the content of those conditions, this Court is convinced that those conditions are inapplicable to an equitable owner and possessor of the property, excepting the requirement for insuring the property.

Defendant contends that plaintiff was aware of the Defendant's change from tenant to purchaser because practically every receipt and payment instrument is designated for 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but for his records, there would be no recollection. Plaintiff admitted that he kept no records of their transactions. Mr. Simmons demonstrates an approach that reflects the essence of this agreement: a substantial amount of money would be spent for a major property but the transaction involved a diminis scale, i.e. no major lender and \$500.00 per month payments.

Plaintiff offered no evidence or testimony of making demand for payment. The 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be his. "The principal that the vendee becomes the equitable owner of real property while the contract is still executory was established for the purpose of enabling him to resort to a court of equity for the protection of his rights, on the ground that a mere action for damages arising from a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard, 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the ejectment action taken without due cause.

Plaintiff initiated this action alleging default in payment and some opinion regarding the building; subsequently, he amended his complaint to include alleged other failure. After reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to depreciate the value of the property. According to the County Tax Assessor, the property's value has increased appreciably. All testimony describes the building as a once vacant structure with very sparse amenities. Mr. Simmons added a room for an office so there was some improvement. There has been no claim for insurance payment so that item is not material to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek clarification as to who was responsible for these tax payments. In light of Mr. Simmons' constant use of the "mortgage" term, it would seem that a discussion regarding taxes and insurance would have occurred. Plaintiff is an experienced and well-established business man who knows the relative value of "allowed business deductions" and probably appreciated the availability of these expenses. So the behavior of seeking an ejectment appears like "eating your cake and having it too."

Q

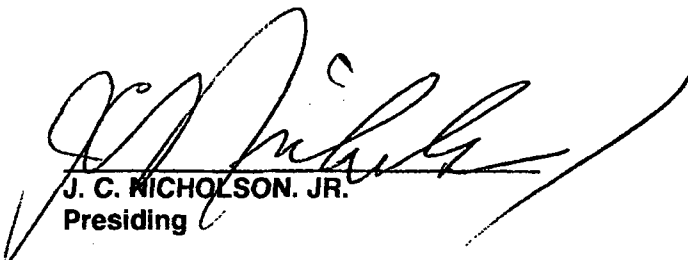
Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for \$87, 540.00 towards the purchase price of \$125,000 with a balance of \$37,460.00 to be paid on the installment contract at the rate of \$500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notation of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13, 2013
Charleston, S.C.


J. C. NICHOLSON, JR.
Presiding

THE STATE OF SOUTH CAROLINA	)	
	:	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Cause No. 2014 CP 10 1635
ALLEN LIVINGSTON	)	
	:	
Plaintiff,	)	
	:	
-versus-	)	EXHIBIT C
	:	(Valid Authentic of Payments)
HAROLD SIMMONS JR.	)	
	:	
Defendant.	)	
	:	

Any and all said such receipt of payments that have not been allotted for in any such court proceeding known unto this day are listed below and should be taken into account as a valid authentic receipt of payment are as follows:

COURT ORDERED CREDIT: \$87,540.00 (See Exhibit B)

COURT ORDERED BALANCE: \$37,460.00 (See Exhibit B)

DEFENDANT ORIGINAL VALID AUTHENTIC RECEIPT OF PAYMENTS (Not accounted for in any other court proceeding but due proper credit): \$8,400.00 (See Exhibit C pg.2)

DEFENDANT CHRONOLOGICAL LIST OF ORIGINAL VALID AUTHENTIC RECEIPTS

1)	09/15/2009	\$500	
2)	12/15/2009	\$500	
3)	01/15/2010	\$500	
4)	02/15/2010	\$500	
5)	06/15/2010	\$500	
6)	07/15/2010	\$500	
7)	No date	\$500	
8)	No date	\$400	
9)	10/09/2012	\$500	
10)	10/09/2012	\$500	
11)	10/09/2012	\$500	
12)	10/22/2012	\$500	
13)	10/22/2012	\$500	
14)	10/22/2012	\$500	
15)	05/04/2013	\$500	
16)	05/04/2013	\$500	
17)	05/04/2013	\$500	
18)	Total	\$8400	
19)	<u>Difference: \$37460 - \$8400 = \$29060</u>		

February 20, 2013 Court order Find Total Paid \$23,540.00

Begins Payment of June 15, 2000 At \$500.00 a month

Month	year	End year payment
June	2000	\$ 3,500.00
January	2001	6000.00
	2002	6000.00
	2003	6000.00
	2004	6000.00
	2005	6000.00
	2006	6000.00
	2007	6000.00
	2008	6000.00
	2009	6000.00
	2010	6000.00
10 1/2 years		\$ 63,500.00
	2011	6000.00
	2012	6000.00
	2013	6000.00
4 years	2014	6000.00
		24000.00
Not Accounted for cash Receipts Before court order		
Total \$ 3900.00		
Not Accounted for money order Before and after		
court order Total 4,500.00 Total of \$ 8,400.00		

Q

month	year	End year payment
	2015	\$ 6,000.00
	2016	\$ April 2,000.00 and may 15, 2016 \$ 440.00

Total Paid \$95,940.00

Donald Simon Jr.

Q

No. _____ 1-15 2010

Received from Harold Simmons Jr.Five Hundred 00Dollars
100

Amt of Account	68,860.00
Amt Paid	500.00
	CASH
Balance Due	68,360.00

MORTGAGE FOR 469-16-00-329

\$ 500.00

No. _____ 9-15 - 2009

Received from Harold Simmons Jr.Five Hundred Dollars 00Dollars
100

Amt of Account	70,860.00
CASH Amt Paid	500.00
Balance Due	70,360.00

MORTGAGE FOR 469-16-00-329

\$ 500.00

No. _____ 12-15 2009

Received from Harold Simmons Jr.Five Hundred 00Dollars
100

Amt of Account	69,360.00
Amt Paid	500.00
	CASH
Balance Due	68,860.00

MORTGAGE FOR 469-16-00-329

\$ 500.00

No. _____

2-15-2010

Received from Harold Simmons JrFive Hundred ⁰⁰/₁₀₀ _____ Dollars

Amt of Account	68,360	00
Amt Paid	500	00
	CASH	
Balance Due	67,860	00

Mortgage 469-16-329

\$ 500.00

No. _____

6-15-2010

Received from Harold Simmons Jr

Dollars

Amt of Account	66,360	00
Amt Paid	500	00
	CASH	
Balance Due	65,860	00

Mortgage 469-16-00-329

\$ 500.00

No. _____

7-15-2010

Received from Harold Simmons JrFive Hundred ⁰⁰/₁₀₀ _____ Dollars

Amt of Account	65,860	00
Amt Paid	500	00
	CASH	
Balance Due	65,360	00

For Mortgage 469-16-00-329

\$ 500.00

RECEIPT

DATE _____ No. 127610

RECEIVED FROM Harold Simmons Jr. \$ 500.00

Five Hundred 00 _____ DOLLARS

☐ FOR RENT
☐ FOR m.

ACCOUNT	500	00
PAYMENT	500	00
BAL. DUE	000	00

☒ CASH
☐ CHECK
☐ MONEY ORDER

FROM _____ TO _____

BY [Signature]

adams 2701

RECEIPT

DATE _____ No. 127628

RECEIVED FROM Harold Simmons Jr. \$ 400.00

_____ DOLLARS

☐ FOR RENT
☐ FOR _____

ACCOUNT		
PAYMENT		
BAL. DUE		

☒ CASH
☐ CHECK
☐ MONEY ORDER

FROM _____ TO _____

BY [Signature]

adams 2701

Q

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20206481714	Year, Month, Day <i>2014</i> 2012-09-10	Post Office 294051	Amount \$500.00	Clerk 0012	

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20206481703	Year, Month, Day <i>2014</i> 2012-09-10	Post Office 294051	Amount \$500.00	Clerk 0012	

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20206481692	Year, Month, Day <i>2014</i> 2012-09-10	Post Office 294051	Amount \$500.00	Clerk 0012	

Added

RECEIPT DATE 9/11/12 No. 887401

RECEIVED FROM HAROLD SIMMONS \$500.00

FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS

☐ FOR RENT
☐ FOR 20206481714

ACCOUNT		☒ CASH
PAYMENT		☐ CHECK
BAL. DUE		☐ MONEY ORDER
		☐ CREDIT CARD

FROM _____ TO _____

BY [Signature]

RECEIPT DATE 9/11/12 No. 887402

RECEIVED FROM HAROLD SIMMONS \$500.00

FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS

☐ FOR RENT
☐ FOR 20206481703

ACCOUNT		☒ CASH
PAYMENT		☐ CHECK
BAL. DUE		☐ MONEY ORDER
		☐ CREDIT CARD

FROM _____ TO _____

BY [Signature]

RECEIPT DATE 9/11/12 No. 887403

RECEIVED FROM HAROLD SIMMONS \$500.00

FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS

☐ FOR RENT
☐ FOR 20206481692

ACCOUNT		☒ CASH
PAYMENT		☐ CHECK
BAL. DUE		☐ MONEY ORDER
		☐ CREDIT CARD

FROM _____ TO _____

BY [Signature]

Q

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20216408534	Year, Month, Day <i>2014</i> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010	

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20216408545	Year, Month, Day <i>2014</i> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010	

UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <i>Allen Livingston</i>	KEEP THIS RECEIPT FOR YOUR RECORDS			
	Address				
Serial Number 20216408556	Year, Month, Day <i>2014</i> 2012-10-22	Post Office 294051	Amount \$500.00	Clerk 0010	

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887414</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408534</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887415</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408545</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887416</u>
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>	
<u>Five hundred and no/100</u>		DOLLARS	
☐ FOR RENT ☐ FOR <u>Jeff Barnwell</u>			
ACCOUNT		☐ CASH ☐ CHECK ☒ MONEY ORDER ☐ CREDIT CARD	USPS # <u>20216408556</u> FROM _____ TO _____ BY <u>N. Snow</u>
PAYMENT	<u>500 00</u>		
BAL. DUE			



UNITED STATES
POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

**NOT
NEGOTIABLE**

Pay to *Allen Livingston*

Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number
21080419470

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012



UNITED STATES
POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

**NOT
NEGOTIABLE**

Pay to *Allen Livingston*

Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number
21080419457

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012



UNITED STATES
POSTAL SERVICE®

CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

**NOT
NEGOTIABLE**

Pay to *Allen Livingston*

Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Serial Number
21080419468

Year, Month, Day
2014
2013-05-04

Post Office
294051

Amount
\$500.00

Clerk
0012

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419470				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	mortgage payment				
☐ TELEPHONED					
☐ RETURNED YOUR CALL					
☐ PLEASE CALL					
☐ WILL CALL AGAIN					
☐ CAME TO SEE YOU					
☐ WANTS TO SEE YOU					
SIGNED	Allen Livingston & Barnwell (Jeffrey Barnwell) Roxane Kirby 1154				

BARNWELL LAW FIRM PC
47 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419457				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check) mortgage payment				
☐ TELEPHONED					
☐ RETURNED YOUR CALL					
☐ PLEASE CALL					
☐ WILL CALL AGAIN					
☐ CAME TO SEE YOU					
☐ WANTS TO SEE YOU					
SIGNED	Allen Livingston & Barnwell (Jeffrey Barnwell) Roxane Kirby 1154				

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419468				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check) mortgage payment				
☐ TELEPHONED					
☐ RETURNED YOUR CALL					
☐ PLEASE CALL					
☐ WILL CALL AGAIN					
☐ CAME TO SEE YOU					
☐ WANTS TO SEE YOU					
SIGNED	Allen Livingston & Barnwell (Jeffrey Barnwell) Roxane Kirby 1154				

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT Q

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT P

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

~~2010-CP-10-8027~~

2014 CP 10 1 635

HAROLD SIMMONS,

Defendant(s)

(Please Print)

Submitted By: Bruce A. Berlinsky

Address: P.O. Box 206
Charleston, SC 29402

SC Bar #: 671

Telephone #: (843) 852-2202

Fax #: (843) 852-4844

Other:

E-mail: bablaw@bellsouth.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | | | | | | | | | |
|--|---|--|--|--|--|--|---|--|---|--------------------------------------|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) | | | | | | | | |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) | | | | | | | | |
| Special/Complex /Other
<table border="0"> <tr> <td>☐ Environmental (600)</td> <td>☐ Pharmaceuticals (630)</td> </tr> <tr> <td>☐ Automobile Arb. (610)</td> <td>☐ Unfair Trade Practices (640)</td> </tr> <tr> <td>☐ Medical (620)</td> <td>☐ Out-of State Depositions (650)</td> </tr> <tr> <td>☐ Other (699)</td> <td></td> </tr> </table> | | | | ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Medical (620) | ☐ Out-of State Depositions (650) | ☐ Other (699) | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | | | | | | | | | |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | | | | | | | | | |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | | | | | | | | | |
| ☐ Other (699) | | | | | | | | | | | |

Submitting Party Signature:

Date:

3/10/14

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

0

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville**, and Anderson**
** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-8027

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

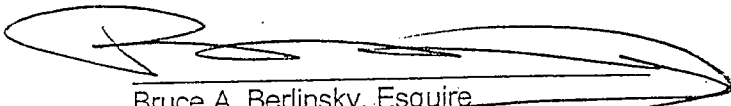
Defendant.

LIS PENDENS

1. Installment Sale Contract Foreclosure
2. Non-Jury

FILED
2014 MAR 11 PM 2:06
JULIE J. ARMSTRONG
CLERK OF COURT

NOTICE IS HEREBY GIVEN THAT an action has been commenced and is pending in the Court of Common Pleas for Charleston County, State of South Carolina, upon the Complaint of the Plaintiff above-named against the Defendant above-named for the purpose of seeking to enforce a contract for the sale of the below described property through specific performance and to obtain a declaration of the rights, status and other legal relations of the parties hereto with respect to the real estate hereinafter described. That the premises affected by the said Complaint in the action hereby commenced was, at the time of the commencement of this action and at the time of filing this Notice, described as follows: See Attached Exhibit "A".


Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

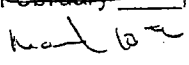
Charleston, South Carolina
February __, 2014


Exhibit "A"

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

TMS No.: 469-16-00-329

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-8027

Appeal Appeal Court
1503-734-1890

FILED
2014 MAR 11 PM 2:05
JAMES J. ARMBRIST
CLERK OF COURT

ALLEN LIVINGSTON,
Plaintiff,

versus

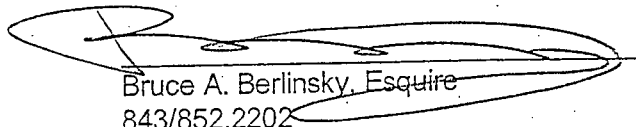
HAROLD SIMMONS,
Defendant.

SUMMONS

1. Installment Sale Contract Foreclosure
2. Non-Jury.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you, and to serve a copy of your Answer to said Plaintiff on the subscriber at his office at One Carriage Lane, Building F, Charleston, South Carolina 29407, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer, appear or otherwise plead within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in this Complaint and will further apply to the Court to have you placed in default.


Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
February 10, 2014

huck 10-2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2010-CP-10-8027

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

COMPLAINT

1. Installment Sale Contract Foreclosure
2. Non-Jury

FILED
2011 MAR 11 PM 2:06
JULIE A. GREGG
CLERK OF COURT

The Plaintiff above named, complaining of the Defendant above named, alleges and says as follows:

1. This is an action for the foreclosure of a mortgage of real estate on property located in Charleston County, South Carolina, which is more fully described on the attached exhibit, hereinafter referred to as Exhibit "A" and is within the jurisdiction of this Honorable Court.

2. That on or about June 15, 2000, Plaintiff entered into a Lease to Buy Agreement with Defendant for property located at 3042 N Carolina Avenue, North Charleston, SC 29405, as evidenced by a copy of said Agreement attached hereto as Exhibit "B" and incorporated by reference.

3. That on or about February 27, 2013, the Honorable J C Nicholson, Jr. entered an Order in the case involving the same parties hereto (2010-CP-10-8027), in which he ruled that the lease to buy agreement between plaintiff and defendant referenced hereinabove was to be considered an installment sales contract and that he Defendant was to make payment of \$500.00/month under the installment sales contract until the balance of Thirty Seven Thousand Four Hundred Sixty and 00/100 (\$37,460.00) Dollars was paid in full.

4. That the Defendant has not made a payment on the Lease to Buy since the entry of the aforesaid Order and has therefore defaulted on the payments called for in the said lease

agreement and court order and the Plaintiff has elected to declare the entire balance, together with any accrued interest, due to institute this action.

5. That the Plaintiff gave the Defendant, through his attorney, notice of the default and right to cure and Defendant has failed and continues to fail to cure.

6. That there is now due and owing on the aforesaid agreement the principal sum of approximately Thirty Six Thousand Four Hundred Sixty and 00/100 (\$36,460.00) Dollars.

7. The Plaintiff seeks no deficiency judgment and waives any right to the same.

WHEREFORE, the Plaintiff prays that this Honorable Court:

- a) Ascertain the amount due and owing to the Plaintiff under the Lease to Buy described above;
- b) Direct that the Plaintiff's mortgage be foreclosed and the mortgaged premises described therein be sold in accordance with the laws and practices of this Court, and that the Defendant, and any person claiming by, through, or under the Defendant, be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the mortgaged premises, or any part thereof;
- c) Direct that out of the proceeds of the sale of the mortgaged premises, after deducting the costs of such sale and a reasonable attorney's fee, the Plaintiff be paid the full amount due on its Lease to Buy;
- d) Direct that any surplus monies be paid in accordance with the further Order of this Court; and
- e) For such other and further relief as this Court may deem just and proper.



Bruce A. Berlinsky, Esquire
843/852.2202
P.O. Box 206 (29402)
One Carriage Ln., Bldg. F
Charleston, SC 29407
ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
February 10, 2014

Handwritten initials and date
10

Exhibit "A"

ALL that piece, parcel or lot of land, together with the buildings thereon, situate in Chicora Place. Measuring and containing 77' in front on Eighth Street, 84' on back line by 105' in depth, and known as #17 in Block I on a plat of Chicora Place recorded in the RMC Office for Charleston County in Plat Book D, Page 197. Butting and bounding as follows: West on Carolina Avenue, North on Eighth Street, East on Lot 15 and South on Lots 18 and 20 in said Block I.

TMS No.: 469-16-00-329

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT O

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

BRUCE A. BERLINSKY, P.A.
Attorney at Law

Mailing Address:
PO Box 206
Charleston, SC 29402

One Carriage Lane, Building F
Charleston, SC 29407

Office: (843) 852-2202
Fax: (843) 852-4844
Bruce@berlinskylawfirm.com

December 12, 2013

VIA US MAIL & CERTIFIED RETURN RECEIPT

Harold Simmons
c/o J. Seth Whipper, Esquire
P.O. Box 70070
North Charleston, SC 29415

RE: 3042 N Carolina Ave., North Charleston, SC
Lease to Buy

Payment made to Attorney Jeffrey Barnwell
A total of \$4,500.00. Attorney Barnwell agreed
to apply the payment once he receives the
court orders.
Payments not reported by Jeffrey Barnwell or
Allen Livingston. 1/10/2014

Dear Mr. Simmons:

I represent Allen Livingston with regard to the above referenced matter.

Pursuant to Order filed February 27, 2013, the balance due on the purchase price was established and you were ordered to pay the sum of \$500.00/month.

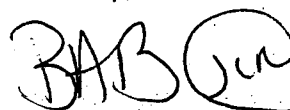
Per the parties agreement, the payments were to be made through the Law Offices of Jeffrey A. Barnwell. The appropriate payments have not been made. In addition to nonpayment of the monthly purchase price, you have failed to provide evidence of insurance.

As a result of the foregoing, you are in default of your obligations and payments. Under the terms of the agreement, you have 30 days to cure the payment default and provide proof of insurance. Failure to do so will result in my client taking whatever action, including, but not limited to foreclosure, to protect his interests.

If you feel that these obligations have been made, please provide proof of the same to my office.

With kind regards, I am

Sincerely,



Bruce A. Berlinsky

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED
WILL BE USED FOR THAT PURPOSE.**

N

BAB/jlr

cc: Allen Livingston
J. Seth Whipper, Esquire

Bruce A. Sachin, Esq.
One Carriage Lane, Bldg. F
Charleston, SC 29407

CERTIFIED MAIL™



7010 1670 0000 1894 8451

RECEIVED
DEC 20 2013

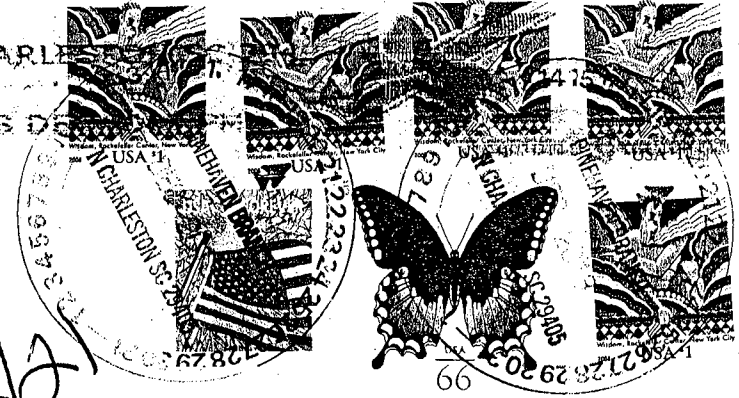
BY:

Harold Simmons
c/o J. Seth Whipper, Esquire
P.O. Box 70070
North Charleston, SC 29415

29415+0070

CHARLE

13 DE



12/14
12/2

Send to Harold Simmons Jr.

Date: 12/27/13

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT N

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

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Harold Simmons, Jr.....Appellant.

EXHIBIT M

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit L
(036)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-8027

ALLIE J. ARMSTRONG
CLERK OF COURT

2013 JUN 13 AM 11:47

FILED

ALLEN LIVINGSTON.....Appellant,

v.

HAROLD SIMMONS Respondent.

NOTICE OF APPEAL

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
147 Wappoo Creek Drive, Suite 104
Charleston, SC 29412
Telephone: (843) 722-0178

Andrew J. Savage, III, Esq.
SAVAGE & SAVAGE, PA
P.O. BOX 1002
Charleston, SC 29402
Telephone: (843) 720-7470

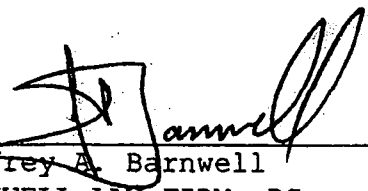
Attorneys for Appellant

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

COMES NOW Appellant, Allen Livingston, and pursuant to Rule 203, SCACR, he hereby files his Notice of Appeal from the Order of the Honorable J.C. Nicholson, Jr., Presiding Circuit Court Judge for County of Charleston, filed May 9, 2013, and mailed May 13, 2013. Written notice of entry of the Order was received by Appellant's counsel on May 16, 2013; a copy of the said Order is attached.

Respectfully submitted,

BARNWELL LAW FIRM, PC

By: 

Jeffrey A. Barnwell

BARNWELL LAW FIRM, PC

Wappoo Centre

147 Wappoo Creek Drive, Suite 104

Charleston, South Carolina 29412

Telephone: (843) 722-0178

Charleston, South Carolina

June 11, 2013

Attorney for Appellant

OTHER COUNSEL OF RECORD:

J. Seth Whipper, Esq.
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2010-CP-10-8027

ALLEN LIVINGSTON.....Appellant,

v.

HAROLD SIMMONS Respondent.

PROOF OF SERVICE

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
147 Wappoo Creek Drive, Suite 104
Charleston, SC 29412
Telephone: (843) 722-0178

Andrew J. Savage, III, Esq.
SAVAGE & SAVAGE, PA
P.O. BOX 1002
Charleston, SC 29402
Telephone: (843) 720-7470

Attorneys for Appellant

2013 JUN 13 AM 11:47
JULIE J. ARMSTRONG
CLERK OF COURT

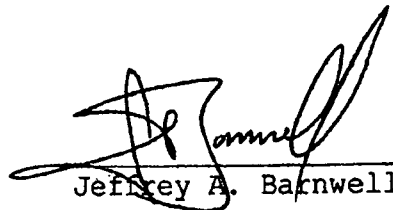
FILED

1 L

This hereby certifies that on June 12, 2013 a copy of the Notice of Appeal (and attached Order) were served, pursuant to Rule 262, SCACR, upon (a) J. Seth Whipper, Attorney for the Respondent, via Electronic Mail; and upon (b) the Clerk of Court for the Lower Court via First Class, U.S. Mail, postage prepaid, respectively, addressed as follows:

J. Seth Whipper, Esq.
Whipper Law Firm
P.O. Box 70070
N. Charleston, SC 29415
jsw@whipperlaw.com

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401


Jeffrey A. Barnwell

Charleston, South Carolina
June 12, 2013



BARNWELL LAW FIRM, PC

Jeffrey A. Barnwell

June 12, 2013

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RE: Allen Livingston, Appellant v. Harold Simmons, Respondent
Case No.: 2010-CP-10-8027

Dear Ms. Kitchings:

Please find enclosed for filing the original and one (1) copy of the **Notice of Appeal** which is being submitted on behalf of Appellant, Allen Livingston, in regard to the above-referenced case.

Also, please find enclosed for filing the original and one (1) copy of the **Proof of Service**, which confirms that service of the Notice of Appeal was made both upon the Attorney for the Respondent, and upon the Clerk of Court for the Charleston County Court of Common Pleas.

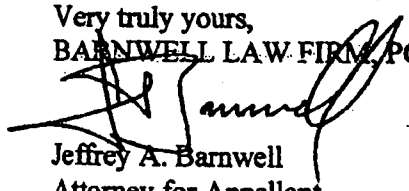
Please also find enclosed a check made payable to the S.C. Court of Appeals in the amount of One Hundred and No/100 Dollars (\$100.00) to cover the filing fee.

In advance, thank you for your assistance with filing the said enclosures with the Court, and also for returning the one extra copy of each, clock-stamped, to my attention by way of the enclosed self-addressed stamped envelope.

Please feel free to contact me with any questions or concerns.

Thank you and with kind regards and best wishes, I remain

Very truly yours,
BARNWELL LAW FIRM, PC


Jeffrey A. Barnwell
Attorney for Appellant

Enclosures: (stated)

Cc w/encls. J. Seth Whipper, Esq.
Andrew J. Savage, III, Esq.
The Honorable Julie J. Armstrong ✓

Wappoo Centre
147 Wappoo Creek Drive, Suite 104
Charleston, South Carolina 29412
Tel: (843) 722-0178
Fax: (843) 737-4714
barnwell@barnwelllawfirm.com

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



www3.charlestoncounty.org

47



JEFFREY ALLEN BARNWELL
WAPPOO CENTRE
147 WAPPOO DR SUITE 104
CHARLESTON SC 29412

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRC

Order/Mot to alter/amend/relieve plntff fr order is denied

CASE NO: 2010CP1008027

Allen R Livingston VS Harold Simmons

This judgment was entered on the 09th day of May, 2013, and a copy mailed first class on Friday, May 10, 2013, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

May 16, 2013

2010-8027

The South Carolina Court of Appeals

Allen Livingston, Appellant

v.

Harold Simmons, Respondent.

Appellate Case No. 2013-001306

The Honorable J. C. Nicholson, Jr.
Charleston County
Trial Court Case No. 2010CP1008027

FILED
2013 DEC -3 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER

It appears that the Appellant, with agreement of Respondent and of counsel, wishes to withdraw and dismiss this matter. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:
Jackson Seth Whipper
Andrew John Savage, III

FILED

8 Nov 2013



2010-CP-10-8027

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 02, 2013

The Honorable Julie J. Armstrong
100 Broad St Ste 106
Charleston SC 29401-2210

FILED
2013 DEC -3 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

REMITTITUR

Re: Allen Livingston v. Harold Simmons
Lower Court Case No. 2010CP1008027
Appellate Case No. 2013-001306

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Jackson Seth Whipper, Esquire
Andrew John Savage, III, Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT L

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-8027

Allen Livingston
PLAINTIFF(S)

Harold Simmons
DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

John Nichols
Circuit Court Judge

2117
Judge Code

2/20/13
Date

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-8027

PROPOSED ORDER

FILED
2013 FEB 27 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

1 THE WITHIN MATTER came before this Court after restoration to the trial docket on a
2 Motion to Restore filed on September 14, 2010 pursuant to a Rule 40(j) dismissal on January
3 13, 2010. The Court has heard testimony and argument for nearly two (2) days and has
4 received numerous exhibits. This case presented major issues regarding the credibility of the
5 parties and the conflicting recollections of the litigants and the witnesses.

6 Plaintiff appeared represented by counsel and presented witnesses (2) to support the
7 waste allegations in his claim. Defendant appeared represented by counsel, calling one witness
8 in support of his counterclaim and defense.

9 This case centers on the issue of whether the Defendant has substantially performed his
10 agreement under the contract negotiated by the parties on June 15, 2000. This matter began
11 as an ejectment action in the Summary Court. Plaintiff alleged that Defendant failed to pay rent
12 when due and demanded for the period beginning 2005 through October 2007. Defendant
13 denied fault and counterclaimed for damages and specific performance on the bases that the
14 agreement executed by the parties was an installment land contract.

15 To determine the nature of their relationship, this Court considered documents submitted
16 by each party that were alleged to set out the terms of their agreement. After careful
17 consideration of those documents, which were two versions of the contract signed by the
18 parties, this Court determined that the document offered by Mr. Simmons was the original
19 agreement and the best evidence of their expectations since it contained original signatures
20 from both parties and the original signatures of a witness. Real property is often sold under
21 contracts that provide for the payment of the purchases in a series of installments. "These
22 contracts, usually termed installment land contracts, are drafted in many ways. Typically, the
23 vendor retains legal title to the property until all of the purchase price has been paid." . . . Lewis
24 v. Premium Investment Corporation, 351 S.C. 167, 568 S. E. 2d 361 (2002). Basic contract law
25 provides that when a contract is clear and unambiguous, the language alone determines the

1. contracts' force and effect. C.A.N Enterprises, Inc. v. South Carolina Health & Human Services
 2. Fin. Commissions, 296 S.C. 373, 373 S.E. 2d 584 (1988).

3. The Defendant contends that, in fact, he has paid against the principle in advance by
 4. making payments at a higher and faster rate than required under the contract. Mr. Simmons'
 5. primary proof for his position is the example where Plaintiff alleges a default in payments during
 6. the year of 2007 yet the evidence (Defendant's Ex.) indicates that Mr. Simmons paid \$500.00
 7. beyond what was required for the period alleged. Mr. Simmons testified that during the length
 8. of the contract he would pay at a higher or faster rate in order to protect himself from defaulting
 9. on the payments. Defendant tendered his entire collection of receipts for the contested period
 10. of payment. This record of payment totaled \$87,540.00. A comparison of the chronological pay
 11. period utilizing the contract rate against Defendant's record of payment reveals that Mr.
 12. Simmons at the time of trial had paid \$16,040.00 beyond what was required under the contract.
 13. Our Court of Appeals has specifically held that in an installment land contract, the vendee in
 14. possession of the land is considered the owner of an equitable interest in the property.
 15. Southern Pole Buildings, Inc. v. Williams, 289 S.C. 521, 347 S. E. 2d 121 (Ct. App. 1986), See
 16. also, Lewis v. Premium Investment Corporation, supra, footnote 4.

17. Actions to foreclose or cancel an instrument are actions in equity. Wilder Corporation
 18. v. Wilke, 324 S.C. 570, 576, 479 S.E. 2d 510, 513 (1996). The courts of South Carolina have
 19. long held that forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc.
 20. v. Merritt, 368 S.C. 570, 629 S.E. 2d 697 (Ct. App. 2006) reh. den. (May 2006), citing Lewis v.
 21. Premium Investment Corporation, supra.

22. The theory of equitable conversion provides that under an executory contract for the sale
 23. of real estate, the equitable estate passes to the purchaser and the bare legal title for security
 24. purposes remains in the vendor. Brooks v. Council of Co-Owners of Stones Throw Horizontal
 25. Property Regime 1. 315 S.C. 474, 476, 445 S. E. 2d 630, 632 (1994) citing 8A George W.
 26. Thompson, Commentaries on the Modern Law of Real Property § 4447 (1963). Despite Mr.
 27. Simmons' struggles, his efforts to successfully satisfy his obligations are impressive,
 28. fundamentally, and significant, legally. Earlier during argument of counsel, defense counsel
 29. objected to the treatment of the list of conditions on page four of the contract as applicable to
 30. the Defendant buyer. Counsel argues that once Defendant became a buyer, those conditions
 31. no longer applied to the Defendant. In light of the doctrine of equitable conversion and review of
 32. the content of those conditions, this Court is convinced that those conditions are inapplicable to
 33. an equitable owner and possessor of the property, excepting the requirement for insuring the
 34. property.

1 Defendant contends that plaintiff was aware of the Defendant's change from tenant to
2 purchaser because practically every receipt and payment instrument is designated for
3 'mortgage'. Mr. Simmons has been very fastidious in recording the matter of payment and, but
4 for his records, there would be no recollection. Plaintiff admitted that he kept no records of their
5 transactions. Mr. Simmons demonstrates an approach that reflects the essence of this
6 agreement: a substantial amount of money would be spent for a major property but the
7 transaction involved a diminis scale, i.e. no major lender and \$500.00 per month payments.

8 Plaintiff offered no evidence or testimony of making demand for payment. The
9 'mortgage' can be clearly seen on the money orders Mr. Simmons used for payment. The
10 "mortgagee" notation can be seen on the Defendant's exhibit showing deposits into Plaintiff's
11 Wells Fargo/Wachovia account as early as 2005 and Mr. Simmons' receipts show this notation
12 as early as 2002. Plaintiff's behavior in accepting these payments under the circumstances
13 evidenced convinced Mr. Simmons that the building at North Carolina Avenue would one day be
14 his. "The principal that the vendee becomes the equitable owner of real property while the
15 contract is still executory was established for the purpose of enabling him to resort to a court of
16 equity for the protection of his rights, on the ground that a mere action for damages arising from
17 a breach of the contract by the vendor would not afford him equitable relief." Good v. Jarrard,
18 93 S.C. 229, 236, 76 S.E. 2d 698, 701 (1912). In this instance the vendor's breach is the
19 ejectment action taken without due cause.

20 Plaintiff initiated this action alleging default in payment and some opinion regarding the
21 building; subsequently, he amended his complaint to include alleged other failure. After
22 reviewing the exhibits, this Court is not convinced that Mr. Simmons has done anything to
23 depreciate the value of the property. According to the County Tax Assessor, the property's
24 value has increased appreciably. All testimony describes the building as a once vacant
25 structure with very sparse amenities. Mr. Simmons added a room for an office so there was
26 some improvement. There has been no claim for insurance payment so that item is not material
27 to this action, nor the contractual relationship. Plaintiff claims a loss in relation to his payment of
28 property taxes. At no time did he complain to Mr. Simmons about the property taxes or seek
29 clarification as to who was responsible for these tax payments. In light of Mr. Simmons'
30 constant use of the "mortgage" term, it would seem that a discussion regarding taxes and
31 insurance would have occurred. Plaintiff is an experienced and well-established business man
32 who knows the relative value of "allowed business deductions" and probably appreciated the
33 availability of these expenses. So the behavior of seeking an ejectment appears like "eating
34 your cake and having it too."

Therefore, credibility remains a big issue in this case; from the considerations involving which version of the contract to the Plaintiff's selective memory on many issues of fact. This Court has been troubled with his version of the facts. His original allegations regarding non-payment between both 2005 and 2007 being revealed to be substantially incorrect and as to the year of 2007 as being entirely inaccurate, and then a crucial factor in looking at the version of the contract is how the front page of Plaintiff's contract contains the wrong address for the subject property and on subsequent pages involving the term for Mr. Simmons' period to make payments being left completely out of the version put forward by the Plaintiff. This tells this Court that there is a proper place for equity in its considerations.

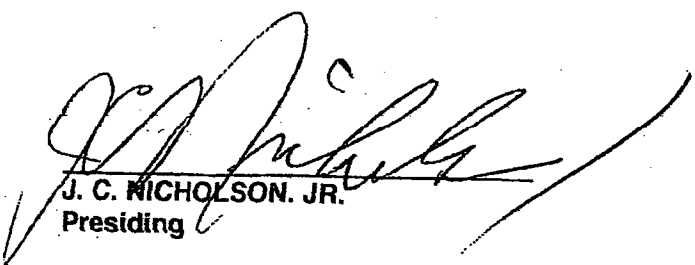
Mr. Simmons has requested relief under the theory of specific performance and that is proper in a matter of equity. He has also requested relief under the theory of unjust enrichment and that is also proper in an equitable action. Under the facts shown the most appropriate relief is specific performance. It is my confirmed opinion that the Defendant should be allowed the relief that he has requested. Hence I am ordering that the transaction be carried out as agreed upon to include Mr. Simmons assuming all of the responsibilities of the purchaser under their agreement as stated in Defendant's contract (Ex.) including the payment of property taxes and the arrangements for insurance. Further, I order that any property taxes paid by the Plaintiff be compensated from Mr. Simmons' overpayment of the purchase price. He will have sixty (60) days to arrange for insuring the building in a commercially reasonable manner.

I further find that the defendant is given credit for \$87, 540.00 towards the purchase price of \$125,000 with a balance of \$37,460.00 to be paid on the installment contract at the rate of \$500 a month until the balance is paid. The defendant will obtain an amortization schedule and supply a copy to the plaintiff. The defendant will either pay by money order or check with a notion of payment and marked from the amortization schedule by both parties.

AND IT IS SO ORDERED.

2/20/13
Charleston, S.C.

2013


J. C. NICHOLSON, JR.
Presiding

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT K

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit J

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address				
	Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481714	2014 2012-09-10	294051	\$500.00	0012	

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address				
	Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481703	2014 2012-09-10	294051	\$500.00	0012	

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS		
	Address				
	Serial Number	Year, Month, Day	Post Office	Amount	Clerk
20206481692	2014 2012-09-10	294051	\$500.00	0012	

Added

E 5

RECEIPT		DATE <u>9/11/12</u>	No. <u>887401</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		\$ <u>500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT			
☐ FOR <u>20206481714</u>			
ACCOUNT		☐ CASH	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT		☐ CHECK	
BAL. DUE		☒ MONEY ORDER	
		☐ CREDIT CARD	

RECEIPT		DATE <u>9/11/12</u>	No. <u>887402</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		\$ <u>500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT			
☐ FOR <u>20206481703</u>			
ACCOUNT		☐ CASH	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT		☐ CHECK	
BAL. DUE		☒ MONEY ORDER	
		☐ CREDIT CARD	

RECEIPT		DATE <u>9/11/12</u>	No. <u>887403</u>
RECEIVED FROM <u>HAROLD SIMMONS</u>		\$ <u>500.00</u>	
<u>FIVE HUNDRED DOLLARS AND — 00/100 DOLLARS</u>			
☐ FOR RENT			
☐ FOR <u>20206481692</u>			
ACCOUNT		☐ CASH	FROM _____ TO _____ BY <u>[Signature]</u>
PAYMENT		☐ CHECK	
BAL. DUE		☒ MONEY ORDER	
		☐ CREDIT CARD	

Added

E J

UNITED STATES POSTAL SERVICE		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to	Allen Livingston			KEEP THIS RECEIPT FOR YOUR RECORDS
	Address				
Serial Number	Year, Month, Day	Post Office	Amount	Clerk	
20216408534	2014 2012-10-22	294051	\$500.00	0010	

UNITED STATES POSTAL SERVICE		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to	Allen Livingston			KEEP THIS RECEIPT FOR YOUR RECORDS
	Address				
Serial Number	Year, Month, Day	Post Office	Amount	Clerk	
20216408545	2014 2012-10-22	294051	\$500.00	0010	

UNITED STATES POSTAL SERVICE		CUSTOMER'S RECEIPT			
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to	Allen Livingston			KEEP THIS RECEIPT FOR YOUR RECORDS
	Address				
Serial Number	Year, Month, Day	Post Office	Amount	Clerk	
20216408556	2014 2012-10-22	294051	\$500.00	0010	

E J

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887414</u>	
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>		
<u>Five hundred and no/100</u>		DOLLARS		
☐ FOR RENT		<u>Jeff Barnwell</u>		
☐ FOR				
ACCOUNT		☒ CASH	USPS # 20216408534	
PAYMENT	<u>500 00</u>	☐ CHECK		FROM _____ TO _____
BAL. DUE		☐ MONEY ORDER ☐ CREDIT CARD		BY <u>N. Aron</u>

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887415</u>	
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>		
<u>Five hundred and no/100</u>		DOLLARS		
☐ FOR RENT		<u>Jeff Barnwell</u>		
☐ FOR				
ACCOUNT		☒ CASH	USPS # 20216408545	
PAYMENT	<u>500 00</u>	☐ CHECK		FROM _____ TO _____
BAL. DUE		☐ MONEY ORDER ☐ CREDIT CARD		BY <u>N. Aron</u>

RECEIPT		DATE <u>10/22/2012</u>	No. <u>887416</u>	
RECEIVED FROM <u>Harold Simmons</u>		\$ <u>500.00</u>		
<u>Five hundred and no/100</u>		DOLLARS		
☐ FOR RENT		<u>Jeff Barnwell</u>		
☐ FOR				
ACCOUNT		☒ CASH	USPS # 20216408556	
PAYMENT	<u>500 00</u>	☐ CHECK		FROM _____ TO _____
BAL. DUE		☐ MONEY ORDER ☐ CREDIT CARD		BY <u>N. Aron</u>

E J

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT		
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS	
	Address _____			
	Serial Number 21080419470		Year, Month, Day ~~2014~~ 2013-05-04	Post Office 294051
				Clerk 0012

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT		
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS	
	Address _____			
	Serial Number 21080419457		Year, Month, Day ~~2014~~ 2013-05-04	Post Office 294051
				Clerk 0012

 UNITED STATES POSTAL SERVICE®		CUSTOMER'S RECEIPT		
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to <u>Allen Livingston</u>		KEEP THIS RECEIPT FOR YOUR RECORDS	
	Address _____			
	Serial Number 21080419468		Year, Month, Day ~~2014~~ 2013-05-04	Post Office 294051
				Clerk 0012

BARNWELL LAW FIRM PC
147 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419470				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 147 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	mortgage payment				
	check (Jeffrey)				
	Allen Livingston & Barnwell				
SIGNED	Roxane Kirby				
	☐ TELEPHONED ☐ RETURNED YOUR CALL ☐ PLEASE CALL ☐ WILL CALL AGAIN ☐ CAME TO SEE YOU ☐ WANTS TO SEE YOU				

ARNWELL LAW FIRM PC
17 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419457				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 17 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check)				
	mortgage payment				
	Allen Livingston &				
	Barnwell Law Firm				
	(Jeffrey Barnwell)				
SIGNED	Roxane Kirby				
	☐ TELEPHONED ☐ RETURNED YOUR CALL ☐ PLEASE CALL ☐ WILL CALL AGAIN ☐ CAME TO SEE YOU ☐ WANTS TO SEE YOU				

ARNWELL LAW FIRM PC
17 WAPPOO CREEK DRIVE
SUITE 104
CHARLESTON SC 29412

PHONE CALL

FOR	Harold Simmons	DATE	5-9-13	TIME	11:21 A.M.
M	money order				
OF	\$500 #21080419468				
PHONE/ MOBILE	BARNWELL LAW FIRM PC 17 WAPPOO CREEK DRIVE SUITE 104 CHARLESTON SC 29412				
MESSAGE	(check)				
	mortgage payment				
	Allen Livingston &				
	Barnwell Law Firm				
	(Jeffrey Barnwell)				
SIGNED	Roxane Kirby				
	☐ TELEPHONED ☐ RETURNED YOUR CALL ☐ PLEASE CALL ☐ WILL CALL AGAIN ☐ CAME TO SEE YOU ☐ WANTS TO SEE YOU				

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT J

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Exhibit I

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

October 9, 2008.

Jeffrey A. Barnwell, Esq.
BARNWELL LAW FIRM, PC
171 Church Street, Suite 160
Charleston, South Carolina 29401

Re: *Livingston v. Simmons*
Case No.: 2008-CP-10-270

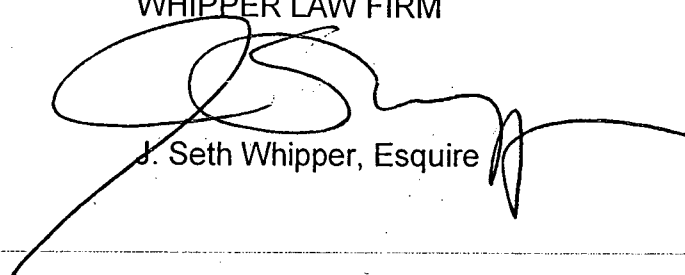
Dear Mr. Barnwell:

In our discussions regarding settlement, what I attempted to convey was that my guy did not have a lump sum totaling \$80,000.00. He is fully prepared to execute the agreement as negotiated and on the terms set out in the contract.

Please govern your actions accordingly.

Sincerely,

WHIPPER LAW FIRM


J. Seth Whipper, Esquire

JSW/lnc

xc: Harold Simmons

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

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Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ALLEN LIVINGSTON,

Plaintiff,

versus

HAROLD SIMMONS,

Defendant.

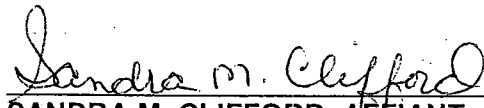
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-270

AFFIDAVIT

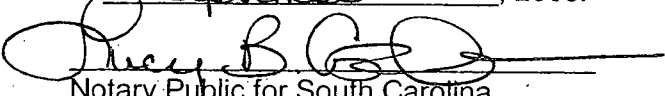
PERSONALLY appeared before me **SANDRA M. CLIFFORD**, who, after being duly sworn, deposes and says as follows:

1. I am employed with the Clerk of Court for Charleston County, South Carolina, and my position is Accounting Division Supervisor;
2. On occasion, I am required to assist the counter personnel with problems, issues, or unusual situations;
3. This year I was asked to clarify a policy to a gentleman who I now know to be Harold Simmons;
4. Our policy relative to receiving monies directed to be paid to or through the Clerk's office is that an Order must be filed in that particular case and state what amount should be paid, when it should be paid, who should receive it, and who should be credited with making the payment;
5. Mr. Simmons came to the Clerk's office twice to make a payment pursuant to a ruling announced in Court; both times we had to refuse the payment because we did not have an Order in the record.
6. Of the two times Mr. Simmons came to the Clerk's office regarding the payments, I spoke with him directly on only one of those occasions.

FURTHER AFFIANT SAYETH NOT.


SANDRA M. CLIFFORD, AFFIANT

SWORN to before me this 2nd day
of September, 2008.


Notary Public for South Carolina

My Commission Expires: 9-16-2014

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

September 4, 2008

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: *Allen Livingston v. Harold Simmons*
Case Number: 2008-CP-10-270
Affidavit – **For Filing**

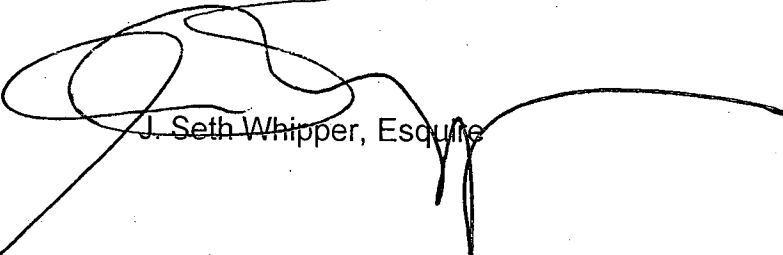
Dear Madam or Sir:

Find enclosed one original and two copies each of the above-referenced for filing and conforming. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM


J. Seth Whipper, Esquire

JSW/lnc

Enclosures

xc: Harold Simmons (w/enclosure)

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT H

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT G

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA,)
)
 CHARLESTON COUNTY)
)
 ALLEN LIVINGSTON,)
)
 Plaintiff,)
)
 vs.)
)
 HAROLD SIMMONS,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 CASE NUMBER 08-CP-10-0270

ORDER

FILED
 2008 AUG 14 PM 1:26
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

This case is before me on Motion of the Defendant for me to Reconsider my Order of June 30, 2008. I grant the Motion and that Order is of no further force. The following is now the Order in this case.

This is an ejectment action brought in Magistrate's Court on or about October 9, 2007. Plaintiff alleges Defendant owes over \$7,000.00 in rent and has violated other terms of the rental contract. Defendant denies that, says he has paid all he owes Plaintiff, and claims he is purchasing the property, not renting. Plaintiff denies Defendant's claims.

This case was transferred to this Court by the Magistrate on January 16, 2008, because the Magistrate thought the issue of rent vs. sale was not in the jurisdiction of the Magistrate's Court.

This case then came before me on Plaintiff's Motion to Amend the Application for Ejectment--actually two Motions--one of December 4, 2007, and another of April 4, 2008.

I should have simply granted those Motions and I do so now. Plaintiff's Motions to Amend his Affidavit and Application for Ejectment is granted.

This case is to be scheduled for a trial by the Clerk of Court at the earliest possible time. In the meantime, the Clerk of Court is Ordered to pay the \$1,000.00 transferred as Trust Bond by

F 6

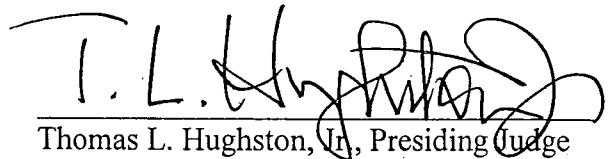
the Magistrate on January 16, 2008, to Plaintiff. ~~He is entitled to this whether it is rent or purchase money.~~ Also, Defendant must pay Plaintiff \$3,500.00 by August 31, 2008, representing either rent or purchase money due Plaintiff for February through August, 2008. Thereafter, until this case is ended, Defendant shall pay Plaintiff \$500.00 each month by the 15th day of the month as per their agreement.

In looking through the file, I note that the Magistrate put this on his schedule for a jury trial though I can find no request from either party for a jury trial. Unless a jury trial has been requested in writing and this fact is established before me within 30 days from today, the Clerk shall transfer this case to the non-jury roster for trial.

For the reasons stated above, the Order of June 30, 2008, is withdrawn and this Order shall direct the parties and trial of this case.

IT IS SO ORDERED.

August 14, 2008
Charleston, South Carolina


Thomas L. Hughston, Jr., Presiding Judge

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

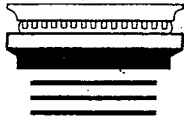
V.

Harold Simmons, Jr.....Appellant.

EXHIBIT F

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent



LEATH, BOUCH & CRAWFORD LLP
PRACTICE LIMITED TO COMMERCIAL LITIGATION & CREDITORS RIGHTS
WITH EMPHASIS ON CONSTRUCTION & ENVIRONMENTAL LAW

July 11, 2008

VIA HAND-DELIVERY

Ms. Dianna Brown
Charleston County Sheriff's Office
100 Broad Street, Suite 381
Charleston, South Carolina 29401

RE: Allen Livingston v. Harold Simmons
Case No.: 2007-CI-67-1769

Dear Brown:

Enclosed you will please find a true and accurate copy of an ORDER for ejectment in connection with the above-captioned matter.

As we discussed, and in accordance with the Sheriff's office ejectment policy, please serve Defendant Harold Simmons with the ORDER and make certain that Defendant Harold Simmons is ejected from the said premises at 3042 North Carolina Avenue, North Charleston, SC as soon as possible and without delay.

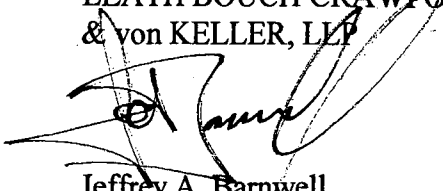
Enclosed you also will please find a check in the amount of \$25.00 made payable to the Charleston County Sheriff to cover the service of process fee in this matter.

By copy of this letter, I am serving counsel of record with a copy of the same.

Thank you very much for all of your attention and assistance in this matter.

With kind personal regards, I remain,

Sincerely yours,
LEATH BOUCH CRAWFORD
& von KELLER, LLP



Jeffrey A. Barnwell

Enclosures: (stated)

Cc w/encl. Allen Livingston
J. Seth Whipper, Esq.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-270

) CASE NO.: 2008-CP-10-270

)
)
)
) ~~SECRET~~ ORDER

) ~~(b)(7)(C)~~ ORDER

)

)

),

1. The first group of respondents (n = 10) was composed of students who had completed the course and were currently employed in the field of international business. These respondents were contacted via email and asked to participate in the study. The second group (n = 10) was composed of students who had completed the course and were currently employed in the field of international business. These respondents were contacted via email and asked to participate in the study. The third group (n = 10) was composed of students who had completed the course and were currently employed in the field of international business. These respondents were contacted via email and asked to participate in the study.

)

E
D

premises for his continued failure to pay rent, for his failure to maintain the premises in good condition, and because the lease tenancy period had expired.¹

IT FURTHER APPEARS, and I so find, that before this matter was removed to the Circuit Court (based upon Defendant's Return of January 4, 2008),² the Magistrate held a hearing and on December 31, 2007 issued an Order finding that Defendant owes Plaintiff monthly rent and that Defendant was to begin depositing monthly rent with the Court on or before January 4, 2008 and again on or before January 15, 2008.

IT FURTHER APPEARS, and I so find, that on January 15, 2008 the Magistrate removed the case to the Circuit Court, pursuant to Rule 13 (j), SCRCP, and that at the hearing on May 5, 2008 this Court also found that Defendant was obligated to continue to pay and deposit rent with the Court.

IT FURTHER APPEARS, and I so find, that Defendant appeared at the May 5, 2008 hearing, in response to Plaintiff's Amended Motion for Writ of Ejectment and Rule to Vacate or Show Cause, and that the Court determined, contrary to Defendant's allegations, that rent continues to be owed and due the Plaintiff.

IT FURTHER APPEARS, and I so find, that since the May 5, 2008 hearing Defendant has continued in his failure to pay rent for the use and occupation of Plaintiff's commercial property and that Defendant continues to occupy and not pay rent for the use

#2
T.L.R.

¹ Plaintiff also averred in his amended motion, pursuant to the terms and conditions of the lease, (on file with the Court), that Defendant has failed to maintain public liability insurance on Plaintiff's property (or has failed to provide proof thereof) in a minimum amount of Three Hundred Thousand and No/100 Dollars (\$300,000.00), putting an undue risk, burden, and liability upon Plaintiff, that Defendant has never paid any property taxes on Plaintiff's property, that the accumulation of waste and refuse on Plaintiff's property is causing probable health and safety liabilities upon Plaintiff, and that Defendant admitted that he fabricated receipts of rent that he dated in the future and that he put Plaintiff's signature on. Copies of the receipts are on file with the Court.

² Defendant denied that he owed rent in his Return; however, the Magistrate Court found that Defendant did in fact owe rent and ordered Defendant to begin making monthly deposits of Five Hundred Dollars and No/100 (\$500.00) to the Clerk of Court.

E D
and occupation of Plaintiff's commercial property, as it becomes due, as it is and has been demanded by Plaintiff, and as the Court has ordered.

IT FURTHER APPEARS, and I so find, that, pursuant to S.C. Code Ann. § 27-37-155 (B) (3) (Supp. 2007), a warrant of ejectment will be issued, Defendant will be considered ejected from the premises upon the signing of this Order, and that Plaintiff will be placed in full and immediate possession of the premises within 24 hours of presenting a copy of the signed Order to either the sheriff, deputy or constable for Charleston County.

IT FURTHER APPEARS, and I so find, that Plaintiff is entitled to all past and currently due rent, plus prejudgment and postjudgment interest, any and all additional monies that Defendant owes Plaintiff, including but not necessarily limited to, those required for reasonable repair of any existing property damage, and for the amount of reasonable costs and expenses that Plaintiff has incurred because of having to commence this litigation.

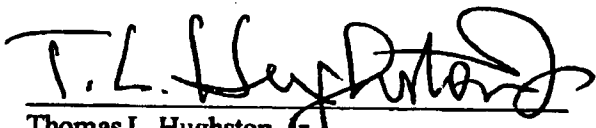
IT IS, THEREFORE, ORDERED:

- #3
T.L.H.
1. That Defendant Harold Simmons, pursuant to S.C. Code Ann. § 27-37-155 (B) (3) (Supp. 2007), is hereby and immediately ejected from the Plaintiff Allen Livingston's commercial property located at 3042 North Carolina Avenue, in North Charleston, South Carolina and that, with a copy of this Order provided, the sheriff, deputy or constable for Charleston County shall eject Defendant Simmons from Plaintiff's property and place Plaintiff in full possession of his property within 24 hours of being provided with the copy of the signed Order;

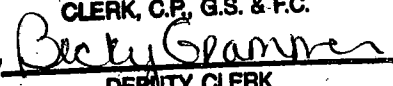
2. That Plaintiff Allen Livingston is awarded all past and currently due rent, plus prejudgment and postjudgment interest, any and all additional monies that are determined to be owed Plaintiff, including but not necessarily limited to, those required for the reasonable repair of any existing property damage on Plaintiff's property, and in an amount to compensate Plaintiff for his reasonable costs and expenses incurred because of having to commence and participate in this litigation; and
3. That Plaintiff Livingston and Defendant Simmons are both permitted to institute any and all post-judgment remedies to the full extent provided by the applicable law of the State of South Carolina.

AND IT IS SO ORDERED.

#4


Thomas L. Hughston, Jr.
Judge of the Court of Common Pleas
For the Ninth Judicial Circuit

Charleston, South Carolina
Date: June 30, 2008

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT E

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

14-1635
Exhibit D

CASE NUMBER: 2014CP1001635

Amortization Schedule

3042 North Carolina Avenue North Charleston, SC 29405

Months/Years	Payments	Comments
1) July 2000	\$3,500.00	
2) 2001	\$6000.00	
3) 2002	\$6000.00	
4) 2003	\$6000.00	
5) 2004	\$6000.00	
6) 2005	\$6000.00	
7) 2006	\$6000.00	
October 10, 2007	\$5000.00 Paid: \$44,500.00	1. Plaintiff filed Ejectment in Magistrate Court. 2. The Contract Agreement the Plaintiff gave the court as evidence was a fake, forgery and altered contract. 3. Defendant had evidence and proof that the Plaintiff contract was faked. 4. Defendant has paid about \$57,500.00. \$12,000.00 over what was due.
8) 2007	\$6000.00 Paid: \$45,500.00	4. Defendant has paid about \$57,500.00. \$12,000.00 over what was due.
9) 2008	\$6000.00	
July 2008		5. The Plaintiff Attorney, Barnwell convince the court to doing a 24-hour Ejectment for money the court refused to accept. 6. Plaintiff and his Attorney (Barnwell) told the Defendant and his Attorney the case would be dropped if the Defendant paid \$80,000.00. The Defendant only owe a balance of

FILED
2015 NOV -3 PM 1:30
JULIE A. HARRIS
CLERK OF COURT

		\$37,000.00
10) 2009	\$6000.00	
11) 2010	\$6000.00	
12) 2011	\$6000.00	
September 4, 2012	\$4,000.00	7. Trial, Hearing Livingston Vs Simmons on Trial Day, Defendant have paid \$87,540.00 8. From September 11, 2012 to May 5, 2013 Defendant have paid additional \$4500.00 Total Paid \$92,040.00
September 11, 2012	Total Paid: \$73,500.00 (Initial payment that would have been due if were not over paid)	
13) 2012	\$6000.00	
February 23, 2013		9. Court order sign by J.C. Nicholson Jr. order Defendant have paid \$87,540.00 10. Balance that would have been due up to February 23, 2013 \$76,500.00 11. Plaintiff filed Appeal
14) 2013	\$6000.00	
March 2014	\$78,500.00	12. Plaintiff filed Foreclose
June 4, 2014		13. Defendant filed counterclaim for harassment.
15) 2014	\$6000.00 \$87,540.00 + 4500.00	
16) September 2015	\$4500.00 Paid \$92,040.00 Balance owe: \$32,960.00	
October 2015		
November 2015		
December 2015		

x *Karl J. Jr.*

Trial Day September 4, 2012 at 2:00 PM (2 days) Case 2010-CP-10-8027

On September 11, 2012 Defendant Harold Simmons, Jr. met with Attorney Jeff Barnwell and made a payment of \$1,500.00 in the form of three \$500.00 money orders. Attorney Jeff Barnwell agreed that once he received the order he would add payments to the order as needed.

- On February 20, 2013 the Court Ruled in favor of the Defendant
- On February 20, 2013 It is so ordered, ruled, and signed Balance \$37,460.00
- On February 27, 2013 It is so ordered, ruled, and filed Balance \$37,460.00
- (Plaintiff) Motion filed between February and May 2013
- (Plaintiff) Motion denied, judgment entered on May 9, 2013
- (Plaintiff) Motion denied, filed, filed on May 16, 2013

Appeal time ran 30 days

End June 16, 2013

~ If Appeal is not filed ~
~

Payments Started

Old

New

July 2013 Balance \$37,460.00 - \$500.00 = \$36,960.00 Money Order 20206481714

August 2013 Balance \$36,960.00 - \$500.00 = \$36,460.00 Money Order 20206481703

September 2013 Balance \$36,460.00 - \$500.00 = \$35,960.00 Money Order 20206481692

October 2013 Balance \$35,960.00 - \$500.00 = \$35,460.00 Money Order 20216408534

November 2013 Balance \$35,460.00 - \$500.00 = \$34,960.00 Money Order 20216408545

December 2013 Balance \$34,960.00 - \$500.00 = \$34,460.00 Money Order 20216408556

January 2014 Balance \$34,460.00 - \$500.00 = \$33,960.00 Money Order 21080419470

February 2014 Balance \$33,960.00 - \$500.00 = \$33,460.00 Money Order 21080419457

March 2014 Balance \$33,460.00 - \$500.00 = \$32,960.00 Money Order 21080419468

March 10, 2014 Foreclosure was filed for non-payment Case No. 2014-CP-101635

But on June 13, 2013 an Appeal was filed Case No. 2013-00-1306

Appellate Appeal ran June 13, 2013 until dismissed December 3, 2013

Continued...

Payments Started Old New

January 2014 Balance \$37,460.00 - \$500.00 = \$36,960.00 Money Order 20206481714

February 2014 Balance \$36,960.00 - \$500.00 = \$36,460.00 Money Order 20206481703

March 2014 Balance \$36,460.00 - \$500.00 = \$35,960.00 Money Order 20206481692

(March 2014 Foreclosure filed)

April 2014 Balance \$35,960.00 - \$500.00 = \$35,460.00 Money Order 20216408534

May 2014 Balance \$35,460.00 - \$500.00 = \$34,960.00 Money Order 20216408545

June 2014 Balance \$34,960.00 - \$500.00 = \$34,460.00 Money Order 20216408556

July 2014 Balance \$34,460.00 - \$500.00 = \$33,960.00 Money Order 21080419470

August 2014 Balance \$33,960.00 - \$500.00 = \$33,460.00 Money Order 21080419457

September 2014 Balance \$33,460.00 - \$500.00 = \$32,960.00 Money Order 21080419468

Harold Simmons, Jr.

Signature Harold Simmons Jr.

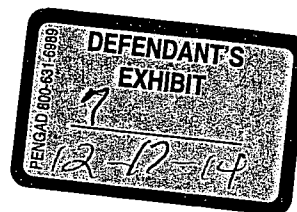
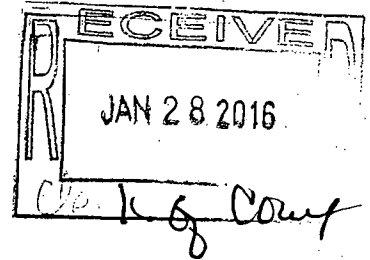


Exhibit 14-1635
D2

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108



CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

November 10, 2015

U. S. MAIL ONLY

Honorable Mikell R. Scarborough
S.C. Master-In-Equity
100 Broad Street, Suite 266
Charleston, South Carolina 29401-2258

RE: ***Allen Livingston v. Harold Simmons***
Case No.: 2014-CP-10-1635
Original Amortization Schedule- For Review

Dear Judge Scarborough:

Per my email earlier, attached is the hard copy of the above-referenced for your review. Should you have any further questions or concerns, please contact me at the above.

Thank you for your anticipated assistance and cooperation.

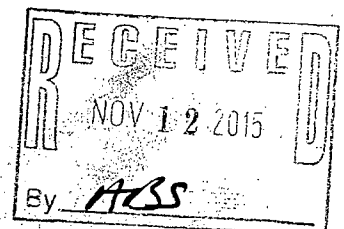
Sincerely,
WHIPPER LAW FIRM

J. Seth Whipper, Esq.

JSW/ljs

Enclosures

xc: Harold Simmons (w/o enclosures)



Livingston vs Simmons

Original Amortization Schedule

\$125,000.00 at \$500.00 per month at 0.00% interest

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
1	6/15/2000	\$500.00	\$500.00	\$124,500.00
2	7/15/2000	\$500.00	\$1,000.00	\$124,000.00
3	8/15/2000	\$500.00	\$1,500.00	\$123,500.00
4	9/15/2000	\$500.00	\$2,000.00	\$123,000.00
5	10/15/2000	\$500.00	\$2,500.00	\$122,500.00
6	11/15/2000	\$500.00	\$3,000.00	\$122,000.00
7	12/15/2000	\$500.00	\$3,500.00	\$121,500.00
8	1/15/2001	\$500.00	\$4,000.00	\$121,000.00
9	2/15/2001	\$500.00	\$4,500.00	\$120,500.00
10	3/15/2001	\$500.00	\$5,000.00	\$120,000.00
11	4/15/2001	\$500.00	\$5,500.00	\$119,500.00
12	5/15/2001	\$500.00	\$6,000.00	\$119,000.00
13	6/15/2001	\$500.00	\$6,500.00	\$118,500.00
14	7/15/2001	\$500.00	\$7,000.00	\$118,000.00
15	8/15/2001	\$500.00	\$7,500.00	\$117,500.00
16	9/15/2001	\$500.00	\$8,000.00	\$117,000.00
17	10/15/2001	\$500.00	\$8,500.00	\$116,500.00
18	11/15/2001	\$500.00	\$9,000.00	\$116,000.00
19	12/15/2001	\$500.00	\$9,500.00	\$115,500.00
20	1/15/2002	\$500.00	\$10,000.00	\$115,000.00
21	2/15/2002	\$500.00	\$10,500.00	\$114,500.00
22	3/15/2002	\$500.00	\$11,000.00	\$114,000.00
23	4/15/2002	\$500.00	\$11,500.00	\$113,500.00
24	5/15/2002	\$500.00	\$12,000.00	\$113,000.00
25	6/15/2002	\$500.00	\$12,500.00	\$112,500.00
26	7/15/2002	\$500.00	\$13,000.00	\$112,000.00
27	8/15/2002	\$500.00	\$13,500.00	\$111,500.00

Exhibit
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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
28	9/15/2002	\$500.00	\$14,000.00	\$111,000.00
29	10/15/2002	\$500.00	\$14,500.00	\$110,500.00
30	11/15/2002	\$500.00	\$15,000.00	\$110,000.00
31	12/15/2002	\$500.00	\$15,500.00	\$109,500.00
32	1/15/2003	\$500.00	\$16,000.00	\$109,000.00
33	2/15/2003	\$500.00	\$16,500.00	\$108,500.00
34	3/15/2003	\$500.00	\$17,000.00	\$108,000.00
35	4/15/2003	\$500.00	\$17,500.00	\$107,500.00
36	5/15/2003	\$500.00	\$18,000.00	\$107,000.00
37	6/15/2003	\$500.00	\$18,500.00	\$106,500.00
38	7/15/2003	\$500.00	\$19,000.00	\$106,000.00
39	8/15/2003	\$500.00	\$19,500.00	\$105,500.00
40	9/15/2003	\$500.00	\$20,000.00	\$105,000.00
41	10/15/2003	\$500.00	\$20,500.00	\$104,500.00
42	11/15/2003	\$500.00	\$21,000.00	\$104,000.00
43	12/15/2003	\$500.00	\$21,500.00	\$103,500.00
44	1/15/2004	\$500.00	\$22,000.00	\$103,000.00
45	2/15/2004	\$500.00	\$22,500.00	\$102,500.00
46	3/15/2004	\$500.00	\$23,000.00	\$102,000.00
47	4/15/2004	\$500.00	\$23,500.00	\$101,500.00
48	5/15/2004	\$500.00	\$24,000.00	\$101,000.00
49	6/15/2004	\$500.00	\$24,500.00	\$100,500.00
50	7/15/2004	\$500.00	\$25,000.00	\$100,000.00
51	8/15/2004	\$500.00	\$25,500.00	\$99,500.00
52	9/15/2004	\$500.00	\$26,000.00	\$99,000.00
53	10/15/2004	\$500.00	\$26,500.00	\$98,500.00
54	11/15/2004	\$500.00	\$27,000.00	\$98,000.00
55	12/15/2004	\$500.00	\$27,500.00	\$97,500.00
56	1/15/2005	\$500.00	\$28,000.00	\$97,000.00
57	2/15/2005	\$500.00	\$28,500.00	\$96,500.00
58	3/15/2005	\$500.00	\$29,000.00	\$96,000.00
59	4/15/2005	\$500.00	\$29,500.00	\$95,500.00

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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
60	5/15/2005	\$500.00	\$30,000.00	\$95,000.00
61	6/15/2005	\$500.00	\$30,500.00	\$94,500.00
62	7/15/2005	\$500.00	\$31,000.00	\$94,000.00
63	8/15/2005	\$500.00	\$31,500.00	\$93,500.00
64	9/15/2005	\$500.00	\$32,000.00	\$93,000.00
65	10/15/2005	\$500.00	\$32,500.00	\$92,500.00
66	11/15/2005	\$500.00	\$33,000.00	\$92,000.00
67	12/15/2005	\$500.00	\$33,500.00	\$91,500.00
68	1/15/2006	\$500.00	\$34,000.00	\$91,000.00
69	2/15/2006	\$500.00	\$34,500.00	\$90,500.00
70	3/15/2006	\$500.00	\$35,000.00	\$90,000.00
71	4/15/2006	\$500.00	\$35,500.00	\$89,500.00
72	5/15/2006	\$500.00	\$36,000.00	\$89,000.00
73	6/15/2006	\$500.00	\$36,500.00	\$88,500.00
74	7/15/2006	\$500.00	\$37,000.00	\$88,000.00
75	8/15/2006	\$500.00	\$37,500.00	\$87,500.00
76	9/15/2006	\$500.00	\$38,000.00	\$87,000.00
77	10/15/2006	\$500.00	\$38,500.00	\$86,500.00
78	11/15/2006	\$500.00	\$39,000.00	\$86,000.00
79	12/15/2006	\$500.00	\$39,500.00	\$85,500.00
80	1/15/2007	\$500.00	\$40,000.00	\$85,000.00
81	2/15/2007	\$500.00	\$40,500.00	\$84,500.00
82	3/15/2007	\$500.00	\$41,000.00	\$84,000.00
83	4/15/2007	\$500.00	\$41,500.00	\$83,500.00
84	5/15/2007	\$500.00	\$42,000.00	\$83,000.00
85	6/15/2007	\$500.00	\$42,500.00	\$82,500.00
86	7/15/2007	\$500.00	\$43,000.00	\$82,000.00
87	8/15/2007	\$500.00	\$43,500.00	\$81,500.00
88	9/15/2007	\$500.00	\$44,000.00	\$81,000.00
89	10/15/2007	\$500.00	\$44,500.00	\$80,500.00
90	11/15/2007	\$500.00	\$45,000.00	\$80,000.00
91	12/15/2007	\$500.00	\$45,500.00	\$79,500.00

ADD

	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
92	1/15/2008	\$500.00	\$46,000.00	\$79,000.00
93	2/15/2008	\$500.00	\$46,500.00	\$78,500.00
94	3/15/2008	\$500.00	\$47,000.00	\$78,000.00
95	4/15/2008	\$500.00	\$47,500.00	\$77,500.00
96	5/15/2008	\$500.00	\$48,000.00	\$77,000.00
97	6/15/2008	\$500.00	\$48,500.00	\$76,500.00
98	7/15/2008	\$500.00	\$49,000.00	\$76,000.00
99	8/15/2008	\$500.00	\$49,500.00	\$75,500.00
100	9/15/2008	\$500.00	\$50,000.00	\$75,000.00
101	10/15/2008	\$500.00	\$50,500.00	\$74,500.00
102	11/15/2008	\$500.00	\$51,000.00	\$74,000.00
103	12/15/2008	\$500.00	\$51,500.00	\$73,500.00
104	1/15/2009	\$500.00	\$52,000.00	\$73,000.00
105	2/15/2009	\$500.00	\$52,500.00	\$72,500.00
106	3/15/2009	\$500.00	\$53,000.00	\$72,000.00
107	4/15/2009	\$500.00	\$53,500.00	\$71,500.00
108	5/15/2009	\$500.00	\$54,000.00	\$71,000.00
109	6/15/2009	\$500.00	\$54,500.00	\$70,500.00
110	7/15/2009	\$500.00	\$55,000.00	\$70,000.00
111	8/15/2009	\$500.00	\$55,500.00	\$69,500.00
112	9/15/2009	\$500.00	\$56,000.00	\$69,000.00
113	10/15/2009	\$500.00	\$56,500.00	\$68,500.00
114	11/15/2009	\$500.00	\$57,000.00	\$68,000.00
115	12/15/2009	\$500.00	\$57,500.00	\$67,500.00
116	1/15/2010	\$500.00	\$58,000.00	\$67,000.00
117	2/15/2010	\$500.00	\$58,500.00	\$66,500.00
118	3/15/2010	\$500.00	\$59,000.00	\$66,000.00
119	4/15/2010	\$500.00	\$59,500.00	\$65,500.00
120	5/15/2010	\$500.00	\$60,000.00	\$65,000.00
121	6/15/2010	\$500.00	\$60,500.00	\$64,500.00
122	7/15/2010	\$500.00	\$61,000.00	\$64,000.00
123	8/15/2010	\$500.00	\$61,500.00	\$63,500.00

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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
124	9/15/2010	\$500.00	\$62,000.00	\$63,000.00
125	10/15/2010	\$500.00	\$62,500.00	\$62,500.00
126	11/15/2010	\$500.00	\$63,000.00	\$62,000.00
127	12/15/2010	\$500.00	\$63,500.00	\$61,500.00
128	1/15/2011	\$500.00	\$64,000.00	\$61,000.00
129	2/15/2011	\$500.00	\$64,500.00	\$60,500.00
130	3/15/2011	\$500.00	\$65,000.00	\$60,000.00
131	4/15/2011	\$500.00	\$65,500.00	\$59,500.00
132	5/15/2011	\$500.00	\$66,000.00	\$59,000.00
133	6/15/2011	\$500.00	\$66,500.00	\$58,500.00
134	7/15/2011	\$500.00	\$67,000.00	\$58,000.00
135	8/15/2011	\$500.00	\$67,500.00	\$57,500.00
136	9/15/2011	\$500.00	\$68,000.00	\$57,000.00
137	10/15/2011	\$500.00	\$68,500.00	\$56,500.00
138	11/15/2011	\$500.00	\$69,000.00	\$56,000.00
139	12/15/2011	\$500.00	\$69,500.00	\$55,500.00
140	1/15/2012	\$500.00	\$70,000.00	\$55,000.00
141	2/15/2012	\$500.00	\$70,500.00	\$54,500.00
142	3/15/2012	\$500.00	\$71,000.00	\$54,000.00
143	4/15/2012	\$500.00	\$71,500.00	\$53,500.00
144	5/15/2012	\$500.00	\$72,000.00	\$53,000.00
145	6/15/2012	\$500.00	\$72,500.00	\$52,500.00
146	7/15/2012	\$500.00	\$73,000.00	\$52,000.00
147	8/15/2012	\$500.00	\$73,500.00	\$51,500.00
148	<u>9/15/2012</u>	<u>\$500.00</u>	<u>\$74,000.00</u>	<u>\$51,000.00</u>
149	10/15/2012	\$500.00	\$74,500.00	\$50,500.00
150	11/15/2012	\$500.00	\$75,000.00	\$50,000.00
151	12/15/2012	\$500.00	\$75,500.00	\$49,500.00
152	1/15/2013	\$500.00	\$76,000.00	\$49,000.00
153	<u>2/15/2013</u>	<u>\$500.00</u>	<u>\$76,500.00</u>	<u>\$48,500.00</u>
154	<u>3/15/2013</u>	① <u>\$500.00</u>	<u>\$77,000.00</u>	<u>\$48,000.00</u>
155	<u>4/15/2013</u>	② <u>\$500.00</u>	<u>\$77,500.00</u>	<u>\$47,500.00</u>

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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
156	5/15/2013	\$500.00	\$78,000.00	\$47,000.00
157	6/15/2013	\$500.00	\$78,500.00	\$46,500.00
158	7/15/2013	\$500.00	\$79,000.00	\$46,000.00
159	8/15/2013	\$500.00	\$79,500.00	\$45,500.00
160	9/15/2013	\$500.00	\$80,000.00	\$45,000.00
161	10/15/2013	\$500.00	\$80,500.00	\$44,500.00
162	11/15/2013	\$500.00	\$81,000.00	\$44,000.00
163	12/15/2013	\$500.00	\$81,500.00	\$43,500.00
164	1/15/2014	\$500.00	\$82,000.00	\$43,000.00
165	2/15/2014	\$500.00	\$82,500.00	\$42,500.00
166	3/15/2014	\$500.00	\$83,000.00	\$42,000.00
167	4/15/2014	\$500.00	\$83,500.00	\$41,500.00
168	5/15/2014	\$500.00	\$84,000.00	\$41,000.00
169	6/15/2014	\$500.00	\$84,500.00	\$40,500.00
170	7/15/2014	\$500.00	\$85,000.00	\$40,000.00
171	8/15/2014	\$500.00	\$85,500.00	\$39,500.00
172	9/15/2014	\$500.00	\$86,000.00	\$39,000.00
173	10/15/2014	\$500.00	\$86,500.00	\$38,500.00
174	11/15/2014	\$500.00	\$87,000.00	\$38,000.00
175	12/15/2014	\$500.00	\$87,500.00	\$37,500.00
176	1/15/2015	\$500.00	\$88,000.00	\$37,000.00
177	2/15/2015	\$500.00	\$88,500.00	\$36,500.00
178	3/15/2015	\$500.00	\$89,000.00	\$36,000.00
179	4/15/2015	\$500.00	\$89,500.00	\$35,500.00
180	5/15/2015	\$500.00	\$90,000.00	\$35,000.00
181	6/15/2015	\$500.00	\$90,500.00	\$34,500.00
182	7/15/2015	\$500.00	\$91,000.00	\$34,000.00
183	8/15/2015	\$500.00	\$91,500.00	\$33,500.00
184	9/15/2015	\$500.00	\$92,000.00	\$33,000.00
185	10/15/2015	\$500.00	\$92,500.00	\$32,500.00
186	11/15/2015	\$500.00	\$93,000.00	\$32,000.00
187	12/15/2015	\$500.00	\$93,500.00	\$31,500.00

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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
188	1/15/2016	\$500.00	\$94,000.00	\$31,000.00
189	2/15/2016	\$500.00	\$94,500.00	\$30,500.00
190	3/15/2016	\$500.00	\$95,000.00	\$30,000.00
91	4/15/2016	\$500.00	<u>\$95,500.00</u>	<u>\$29,500.00</u>
192	5/15/2016	\$500.00	\$96,000.00	\$29,000.00
193	6/15/2016	\$500.00	\$96,500.00	\$28,500.00
194	7/15/2016	\$500.00	\$97,000.00	\$28,000.00
195	8/15/2016	\$500.00	\$97,500.00	\$27,500.00
196	9/15/2016	\$500.00	<u>\$98,000.00</u>	<u>\$27,000.00</u>
197	10/15/2016	\$500.00	\$98,500.00	\$26,500.00
198	11/15/2016	\$500.00	\$99,000.00	\$26,000.00
199	12/15/2016	\$500.00	<u>\$99,500.00</u>	<u>\$25,500.00</u>
200	1/15/2017	\$500.00	\$100,000.00	\$25,000.00
201	2/15/2017	\$500.00	\$100,500.00	\$24,500.00
202	3/15/2017	\$500.00	\$101,000.00	\$24,000.00
203	4/15/2017	\$500.00	\$101,500.00	\$23,500.00
204	5/15/2017	\$500.00	\$102,000.00	\$23,000.00
205	6/15/2017	\$500.00	\$102,500.00	\$22,500.00
206	7/15/2017	\$500.00	\$103,000.00	\$22,000.00
207	8/15/2017	\$500.00	\$103,500.00	\$21,500.00
208	9/15/2017	\$500.00	\$104,000.00	\$21,000.00
209	10/15/2017	\$500.00	\$104,500.00	\$20,500.00
210	11/15/2017	\$500.00	\$105,000.00	\$20,000.00
211	12/15/2017	\$500.00	\$105,500.00	\$19,500.00
212	1/15/2018	\$500.00	\$106,000.00	\$19,000.00
213	2/15/2018	\$500.00	\$106,500.00	\$18,500.00
214	3/15/2018	\$500.00	\$107,000.00	\$18,000.00
215	4/15/2018	\$500.00	\$107,500.00	\$17,500.00
216	5/15/2018	\$500.00	\$108,000.00	\$17,000.00
217	6/15/2018	\$500.00	\$108,500.00	\$16,500.00
218	7/15/2018	\$500.00	\$109,000.00	\$16,000.00
219	8/15/2018	\$500.00	\$109,500.00	\$15,500.00

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	Payment Date	Payment Amount	Cumulative Principal	Ending Balance
220	9/15/2018	\$500.00	\$110,000.00	\$15,000.00
221	10/15/2018	\$500.00	\$110,500.00	\$14,500.00
222	11/15/2018	\$500.00	\$111,000.00	\$14,000.00
223	12/15/2018	\$500.00	\$111,500.00	\$13,500.00
224	1/15/2019	\$500.00	\$112,000.00	\$13,000.00
225	2/15/2019	\$500.00	\$112,500.00	\$12,500.00
226	3/15/2019	\$500.00	\$113,000.00	\$12,000.00
227	4/15/2019	\$500.00	\$113,500.00	\$11,500.00
228	5/15/2019	\$500.00	\$114,000.00	\$11,000.00
229	6/15/2019	\$500.00	\$114,500.00	\$10,500.00
230	7/15/2019	\$500.00	\$115,000.00	\$10,000.00
231	8/15/2019	\$500.00	\$115,500.00	\$9,500.00
232	9/15/2019	\$500.00	\$116,000.00	\$9,000.00
233	10/15/2019	\$500.00	\$116,500.00	\$8,500.00
234	11/15/2019	\$500.00	\$117,000.00	\$8,000.00
235	12/15/2019	\$500.00	\$117,500.00	\$7,500.00
236	1/15/2020	\$500.00	\$118,000.00	\$7,000.00
237	2/15/2020	\$500.00	\$118,500.00	\$6,500.00
238	3/15/2020	\$500.00	\$119,000.00	\$6,000.00
239	4/15/2020	\$500.00	\$119,500.00	\$5,500.00
240	5/15/2020	\$500.00	\$120,000.00	\$5,000.00
241	6/15/2020	\$500.00	\$120,500.00	\$4,500.00
242	7/15/2020	\$500.00	\$121,000.00	\$4,000.00
243	8/15/2020	\$500.00	\$121,500.00	\$3,500.00
244	9/15/2020	\$500.00	\$122,000.00	\$3,000.00
245	10/15/2020	\$500.00	\$122,500.00	\$2,500.00
246	11/15/2020	\$500.00	\$123,000.00	\$2,000.00
247	12/15/2020	\$500.00	\$123,500.00	\$1,500.00
248	1/15/2021	\$500.00	\$124,000.00	\$1,000.00
249	2/15/2021	\$500.00	\$124,500.00	\$500.00
250	3/15/2021	\$500.00	\$125,000.00	\$0.00

Harold Smith

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT D

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Lease to Buy:

This lease, mortgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr.

Hereby agree to these terms and provisions here in after set forth, as follow:

That whereas, I Harold Simmons Jr. agree to lease with option to buy said
buyer
property located at 3049 N CAROLINA AVE. At a purchase price, rate
location/address
of \$ one hundred & twenty five thousand \$(125,000.00) Dollars.
price written price in numbers

The monthly Payment is payable in advance and shall be due on or before the
the fifteenth - 15 Day of each month.
written number

If for some reason Harold Simmons Jr. fails to meet the monthly payment
name of buyer
ALLEN LIVINGSTON agree to give Harold Simmons Jr. 30 day
name of seller name of buyer number

Thirteen days to pay any Delinquent payments before he or she is
write number
found in default.

In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller
Harold Simmons Jr. have the right, option to purchase, buy the property,
buyer
located at N CAROLINA AVE. If this agreement is not terminated
address
by either party during the term's set forth Harold Simmons Jr. have the
buyer
right and option to purchase, buy the end of these terms.



Harold Simmons Jr. agree to lease said property for the duration of
buyer

1 years, one
print # write number

For some reason Harold Simmons becomes unable to honor lease agreement, ill, lost wages, business foreclosure, Harold Simmons have the right to brake lease agreement Harold Simmons Jr. have to give 30 days notice.

1 years after entering this agreement Harold Simmons have the right to move from lease to buyer.

Beginning: 6 - 15 - 2000 Ending: 5 - 31 - 2001
month day year month day year

Entering in these agreement from lease to buy the money that is paid in these contract will go toward it as a downpayment.

During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord

Harold Simmons in writing 1 days in advance prior to entering the
leasee number
build during reasonable hours without being liable for tresspassing, for the purpose of inspections, repairs.

Buying these property Harold Simmons is responsible for all taxes
buyer

beginning from 6 - 15 - 2000
month day year

Terms of Payment

Harold Simmons agree to pay: First year \$ 500.00. Beginning
buyer

6 - 15 - 2000. Ending 6 - 15 - 2001
month day year month day year

Second year \$ _____. Beginning _____. Ending _____.
month day year

_____.
month day year

Purchase Price to Buy \$ 125,000.00.

Monthly Payment: \$ 501.03.

ALLEN LIVINGSTON
(_____'s print)

Allen Livingston
(_____'s signature)

Harold Simmons Jr.
(_____'s print)
Renten

Harold Simmons Jr.
(_____'s signature)
Renten

(witness)

(witness)

Lessee shall not, without first obtaining the written consent of the lessor, make any alterations, additions or improvements in, to or about the premises.

Lessee shall not do or suffer anything to be done on the premises which will cause an increase in the rate of fire insurance on the building.

Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the building.

Lessee shall not, without first obtaining the written consent of the lessor, abandon the premises, or allow the premises to become vacant or deserted.

Lessee shall not, without obtaining the written consent of the lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises.

Lessee shall observe and comply with such reasonable rules and regulations as may be established from time to time by lessor.

If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by lessor, will equal or exceed 80% of the replacement value of the building, just prior to the occurrence of the damage, then lessor may, no later than the seventh day following the damage, give lessee a notice of election to terminate the lease. In the event of such election this lease shall be deemed to terminate as of the date of the damage or destruction, and lessee shall surrender the premises within a reasonable time thereafter, and any pre-paid rent shall be refunded proportionally.

If the premises or any part of the premises, or any part of the building materially affecting lessee's use of the premises, be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date and any rent paid for any period beyond such date shall be repaid to lessee.

This lease shall be subject and subordinate to all underlying leases and to mortgages which may now or hereafter affect such leases or the real property of which the premises form a part, and also all renewals, modifications, consolidations, and replacements of the underlying leases and mortgages. Lessee agrees to execute such estoppel letters or other documents required to confirm the same.

Lessor may enter the premises at any reasonable time, upon adequate notice to lessee (except that no notice need be given in case of an emergency) for the purpose of inspection or the making of such repairs, replacements, or additions in, to, on and about the premises or the building, as lessor deems necessary or desirable.

Lessee shall during the term of this lease make all necessary and needful repairs required to maintain the premises in good repair. The Lessee shall at all times maintain public liability insurance with a minimum \$ 300,000 bodily injury liability. Lessee shall provide proof of this coverage to the lessor.

This document represents the entire agreement of the parties and there are no representations not stated herein, and this agreement may only be modified by a writing executed by both parties hereto.

Dated: 6-15-2000




THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

EXHIBIT C

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent



JUDGE STEPHANIE L.W. GANAWAY

County of Charleston Summary Court
2145 Melbourne Avenue, Suite 100
Post Office Box 71316
North Charleston, SC 29415
Phone (843) 745-2215
Fax (843) 745-2334



January 7, 2008

Jeffrey A. Barnwell, Esquire
Post Office Box 59
Charleston, SC 29402

J. Seth Whipper, Esquire
Post Office Box 70070
North Charleston, SC 29415

RE: **ALLEN LIVINGSTON -VS- HAROLD SIMMONS**
CASE NO: 2007-CI-67-1769
MOTION HEARING

Notice to all parties:

A Motion Hearing has been scheduled for the case referenced above in regards to the Return filed by the Defendant's Attorney. This hearing is scheduled for:

MONDAY, JANUARY 14, 2008 AT 2:30 PM

All parties are required to appear unless the court is advised that you would prefer this hearing by conference call.

If I can be of any further assistance, feel free to contact this office.

Sincerely,

Tamara S. Conner
Summary Court Specialists

cc: file

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MAGISTRATE'S COURT

ALLEN R LIVINGSTON
6046 Hyde Park Trcl
RAVENEL SC 29470

PLAINTIFF

Phone: 556-1322

Harold Simmons
3042 N. Carolina Ave
N. Charleston

DEFENDANT

Phone: 554-1414

AFFIDAVIT AND APPLICATION
FOR EJECTMENT
AND
RULE TO VACATE
OR
SHOW CAUSE



Dated: 10/25/07

I, the Plaintiff in this action, being sworn, state that I am the landlord - lessor of the premises herein described. I further state that the premises are within the magisterial jurisdiction of Charleston County located at:

3042 N. Charleston, SC

and that a landlord - tenant relationship exist between the parties described as evidenced by the following facts:

owns over 7000 sq ft in Back Rent from 05-01-07 to 10-07

Grounds for this ejectment are one or more of the following:

- (X) The tenant fails or refuses to pay the rent when due or demanded; or
- () The term of tenancy or occupancy has ended; or
- (X) A term or condition of the lease has been violated, to-wit Suppose To Take of Building

SWORN BEFORE ME THIS

10 DAY OF October 2007

JUDGE STEPHANIE L. W. GANAWAY or NOTARY PUBLIC

My commission expires, 9/25/13

PLAINTIFF

TO THE DEFENDANT NAMED ABOVE:

Upon application for ejectment, above, filed by the Plaintiff, you the Defendant and lessee of the premises noted above, are ordered to vacate the said premises immediately or to show cause before me at this court located at 2145 Melbourne Ave., Ste. 100, North Charleston, SC 29405 within ten (10) days from the date of service of this affidavit and rule why you should not be ejected from the said premises. FAILURE TO VACATE THE PREMISES OR TO RESPOND TO THIS COURT WITHIN THE TIME PERIOD SET ABOVE, MAY RESULT IN THE ISSUANCE OF A WARRANT OF EJECTMENT.

10/11/07

DATE

[Signature]

JUDGE STEPHANIE L. W. GANAWAY

(843) 745-2215

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

V.

Harold Simmons, Jr.....Appellant.

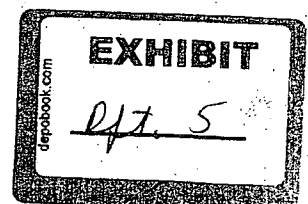
EXHIBIT B

Harold Simmons, Jr. Pro Se
3042 North Carolina Ave
North Charleston, SC 29405
(843) 480-8694

Bruce A. Berlinsky, P.A.
One Carriage Lane Bldg. F.
Charleston, SC 29407
(843) 852-2202
Attorney for Respondent

Lease to Buy:

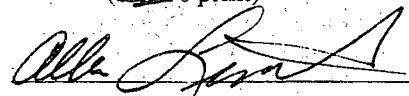
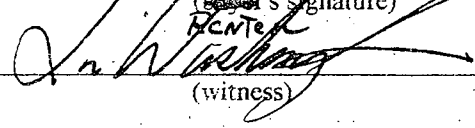
- 1 This lease, mortgage agreement enter in the day of 6 - 15 - 2000 is a legal
month/ day/ year
- 2 and binding contract between ALLEN LIVINGSTON and Harold Simmons Jr
- 3 Hereby agree to these terms and provisions here in after set forth, as follow:
- 4 That whereas, I Harold Simmons Jr agree to lease with option to buy said
buyer
- 5 property located at 3042 N. CAROLINA AVE At a purchase price, rate
NORTH CHARLESTON S.C. 29405
location/address
- 6 of \$ one Hundred + Twenty Five Thousand (\$ 125,000.00) Dollars.
price written price in numbers
- 7 The monthly Payment is payable in advance and shall be due on or before the
- 8 Fifteen - 15 Day of each month.
written number
- 9 If for some reason Harold Simmons Jr fails to meet the monthly payment
name of buyer
- 10 ALLEN LIVINGSTON agree to give Harold Simmons Jr 30 day
name of seller name of buyer number
- 11 Thirty days to pay any Delinquent payments before he or she is
write number
- 12 found in default.
- 13 In the Event ALLEN LIVINGSTON select to terminate the agreement early
seller
- 14 Harold Simmons Jr have the right, option to purchase, buy the property,
buyer
- 15 located at 3042 N. CAROLINA AVE If this agreement is not terminated
NORTH CHARLESTON 29405
address
- 16 by either party during the term's set forth Harold Simmons Jr have the
buyer
- 17 right and option to purchase, buy the end of these terms.



- P.S. (2)
- 1 Harold Simmons Jr. agree to lease said property for the duration of
buyer
 - 2 1 years, one
print # write number
 - 3 For some reason Harold Simmons becomes unable to honor lease
 - 4 agreement, ill, lost wages, business foreclosure, Harold Simmons have
 - 5 the right to brake lease agreement Harold Simmons Jr. have to give
 - 6 30 days notice.
 - 7 1 years after entering this agreement Harold Simmons have
 - 8 the right to move from lease to buyer.
 - 9 Beginning: 6 - 15 - 2000 Ending: 5 - 31 - 2001
month day year month day year
 - 10 Entering in these agreement from lease to buy the money that is paid in these
 - 11 contract will go toward it as a downpayment.
 - 12 During the Duration of the Lease Term ALLEN LIVINGSTON has to notify
landlord
 - 13 Harold Simmons in writing 1 days in advance prior to entering the
leasee number
 - 14 build during reasonable hours without being liable for tresspassing, for the
 - 15 purpose of inspections, repairs.
 - 16 Buying these property Harold Simmons is responsible for all taxes
buyer
 - 17 beginning from 6 - 15 - 2000
month day year
 - 18 Terms of Payment
 - 19 Harold Simmons agree to pay: First year \$ 500.00. Beginning
buyer

25(3)

- 1 6 - 15 - 2000. Ending 6 - 15 - 2001
month day year month day year
- 2 Second year \$ 500.00. Beginning 6 - 15 - 2001. Ending
month day year
- 3 4 - 15 - 2021
month day year
- 4 Purchase Price to Buy \$ 125,000.00.
- 5 Monthly Payment: \$ 500.00.

- 6 ALLEN LIVINGSTON
(~~Allen~~'s print)
- 7 
(~~Allen~~'s signature)
- 8 Harold Simmons Jr.
(~~Harold~~'s print)
Renter
- 9 Harold Simmons Jr.
(~~Harold~~'s signature)
Renter
- 10 
(witness)
- 11 _____
(witness)

29.(4)

Lessee shall not, without first obtaining the written consent of the lessor, make any alterations, additions or improvements in, to or about the premises.

Lessee shall not do or suffer anything to be done on the premises which will cause an increase in the rate of fire insurance on the building.

Lessee shall not permit the accumulation of waste or refuse matter on the leased premises or anywhere in or near the building.

Lessee shall not, without first obtaining the written consent of the lessor, abandon the premises, or allow the premises to become vacant or deserted.

Lessee shall not, without obtaining the written consent of the lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the premises or any part of the premises.

Lessee shall observe and comply with such reasonable rules and regulations as may be established from time to time by lessor.

If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by lessor, will equal or exceed 60% of the replacement value of the building, just prior to the occurrence of the damage, then lessor may, no later than the seventh day following the damage, give lessee a notice of election to terminate the lease. In the event of such election this lease shall be deemed to terminate as of the date of the damage or destruction, and lessee shall surrender the premises within a reasonable time thereafter, and any pre-paid rent shall be refunded proportionally.

If the premises or any part of the premises, or any part of the building materially affecting lessee's use of the premises, be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent shall be apportioned as of the termination date and any rent paid for any period beyond such date shall be repaid to lessee.

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Lessee shall during the term of this lease make all necessary and needful repairs required to maintain the premises in good repair. The Lessee shall at all times maintain public liability insurance with a minimum \$ 300,000 bodily injury liability. Lessee shall provide proof of this coverage to the lessor.

This document represents the entire agreement of the parties and there are no representations not stated herein, and this agreement may only be modified by a writing executed by both parties hereto.

Dated: 6-15-2000

Harold Simon Jr.
Alb. Lee

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHALESTON COUNTY

MASTERS-IN-EQUITY LAW COURT

Mikell R. Scarborough, Master-In-Equity law Judge

Case No. 2016-001201

Allen Livingston.....Respondent,

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Harold Simmons, Jr.....Appellant.

EXHIBIT A

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